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ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

December 8, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

20 DECEMBER 8, 2009

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER



Santos H. Kreimann
Director

Kerry Silverstrom
Chief Deputy

Dear Supervisors:

**APPROVAL OF OPTION TO AMEND LEASE AGREEMENT TO FACILITATE
REDEVELOPMENT - MARINA BAY CLUB APARTMENTS AND MARINA
(Parcel 8T at 14015 Tahiti Way)
MARINA DEL REY
(4th DISTRICT-- 4 VOTES)**

SUBJECT

Request for adoption of the Mitigated Negative Declaration and approval of an option agreement to extend the term of the existing Marina Bay Club Apartments and Marina lease (Parcel 8T) for the renovation of the existing 205 apartment units and the complete redevelopment of the marina with 207 slips and 11 end ties. Exercise of the option is contingent upon Lessee's receipt of entitlements and fulfillment of other conditions required therein.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Consider the Mitigated Negative Declaration for the Marina Bay Club Apartments and Marina lease extension and renovation project together with any comments received during the public review period; find that the Mitigated Negative Declaration reflects the independent judgment and analysis of the Board and adopt the Mitigation Monitoring Program, finding that the Mitigation Monitoring Program is adequately designed to ensure compliance with the mitigation measures during project implementation; find on the basis of the whole record before the Board that there is no substantial evidence the project will have a significant effect on the environment; and adopt the Mitigated Negative Declaration.
2. Approve and authorize the Chair of the Board to sign the Option to Amend Lease Agreement granting to the current lessee, NF Marina, LP, a California limited partnership, upon fulfillment of stated conditions, the right to extend the term of its existing ground lease on Parcel 8T by 30 years.

3. Approve and authorize the Chair of the Board to sign the Amended and Restated Lease in substantially similar form to Exhibit A attached to the Option, upon confirmation by the Director of the Department of Beaches and Harbors that the NF Marina, LP has fulfilled the Option conditions.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Your Board previously approved assignment of the Bay Club Apartments and Marina to its current lessee, NF Marina, LP, a California limited partnership ("Lessee"), on September 27, 2005. Lessee thereafter changed the name to Marina Bay Club Apartments and Marina and entered into negotiations with the Department of Beaches and Harbors ("Department") to extend the lease term for Parcel 8T. The proposed term sheet that resulted from these negotiations provides for an option in favor of the Lessee to extend the lease term by 30 years from its current June 7, 2021 expiration date to June 7, 2051. Lessee will pay an option fee of \$100,000 upon grant of the option and has agreed to spend no less than \$20.0 million in renovations and replacement on both the land- and waterside improvements, which will include, among other things, renovation of all existing apartment buildings to include apartment unit interiors, building facades, club house, interior and exterior common areas, landscaping, and hardscape; replacement of the existing marina; and upgrading of the waterfront promenade to current Marina del Rey standards. Lessee will demolish the existing 230-slip and 11-end-tie marina and construct a new 207-slip and 11-end-tie marina; the newly constructed marina will be able to accommodate boats from 22 feet to 60 feet.

In addition, Lessee has agreed to pay the County percentage rent for apartment units at 14.5% for the entire term of the extended lease, subject to certain offsets during the first 20 years of the term. A summary of the proposed terms for the lease extension is set forth in Attachment A. Due to Lessee's agreement to pay the percentage rent for apartment units, there will be no additional extension fee beyond the \$100,000 option fee. Because the project is a renovation rather than a redevelopment, the Mello Act and the County's Marina del Rey affordable housing policy do not apply. Upon stabilization of the rent in 2015, County rents are projected to be \$1,250,000 per year, an increase of approximately \$418,000 per year over Fiscal Year 2008-09 rents received from the parcel.

The Department of Regional Planning has prepared an Initial Study for the proposed project in compliance with the California Environmental Quality Act ("CEQA") and, along with the Department, recommends your Board's adoption of the Mitigated Negative Declaration and Mitigation Monitoring Program (Attachment B). If adopted, Lessee must thereafter obtain all regulatory approvals and exercise the Option to Amend Lease Agreement ("Option") (Attachment C) within 12 months following grant of the Option, subject to discretion of the Department Director to grant up to two six-month extensions if Lessee is delayed in the receipt of approvals despite its diligent efforts.

Due to the current economic environment, the Department has included in the Option an economic *force majeure* provision that allows Lessee to extend the time to exercise the Option on the condition that Lessee is pursuing project financing in good faith, but cannot obtain financing due to the economic downturn. The Department has obtained an appraisal that confirms the returns to the County from the lease extension for Parcel 8T are equivalent to, or greater than, fair market value.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The recommended action will allow Lessee to continue its effort towards the proactive redevelopment of the parcel, which will result in fulfillment of Strategic Plan Goal No. 1, "Operational Effectiveness," Strategy No. 1, "Fiscal Sustainability," and Goal No. 3, "Community and Municipal Services," Strategy No. 1, "Cultural and Recreational Enrichment," respectively.

FISCAL IMPACT/FINANCING

The draft Amended and Restated Lease for the renovation of Parcel 8T reflects the County's current market rate percentage rents for all relevant categories. They will produce the following fiscal benefits to the County: 1) an option fee; and 2) revenue increases due to renovation of the apartment buildings and replacement of the marina. Each component is discussed in detail below.

Option Fee

Lessee shall pay a non-refundable (except in the case of a default by County) fee of \$100,000 for the Option, due upon execution of the Option.

Revenue Increase Due to Project Redevelopment

The total revenue derived from Parcel 8T during Fiscal Year 2008-09 was approximately \$832,000. After stabilization in 2015, the new project will increase annual County rent by \$418,000 to approximately \$1,250,000.

OPERATING BUDGET IMPACT

Upon your Board's approval of the Option, the Department's Marina operating budget will receive a one-time \$100,000 Option fee as stated above. This revenue will be accounted for as Fiscal Year 2009-10 one-time over-realized revenues.

Costs of consultants and for the Department's Deputy Director and Asset Management Division Chief involved in the negotiation and development of the Option and Amended and Restated Lease are being reimbursed by the Lessee.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The existing 60-year lease for Parcel 8T expires on June 7, 2021. The current improvements on Parcel 8T consist of 205 apartments and 230 existing slips plus 11 end ties. Parcel 8T has frontage on Tahiti Way and is located west of Tahiti Marina (Parcel 7) and east of Parcel 9.

Approval of the Option is without prejudice to the County's full exercise of its regulatory authority in the consideration of the land use entitlements required for the possible exercise of the Option.

Entering into leases of the County's Marina del Rey real property is authorized by Government Code sections 25907 and 25536. The lease terms are in conformance with the maximum 99-year period authorized by California law.

At its meeting of November 18, 2009, the Small Craft Harbor Commission unanimously approved the recommendations to approve the Option and the Amended and Restated Lease for Parcel 8T in the form attached. County Counsel has approved the documents as to form.

ENVIRONMENTAL DOCUMENTATION

In compliance with CEQA, an Initial Study was prepared for the proposed project. The Initial Study identified potentially significant effects of the project on noise, water quality, air quality, biota, and utilities. Prior to the release of the proposed Mitigated Negative Declaration ("MND") and Initial Study for public review, revisions in the project were made or agreed to which would avoid the significant effects or mitigate the effects to a point where clearly no significant effects would occur.

The Initial Study and project revisions showed that there is no substantial evidence, in light of the whole record before the County, that the project as revised may have a significant effect on the environment. Based on the Initial Study and project revisions, an MND was prepared for this project (Attachment B). The proposed Mitigation Monitoring Program, included with the MND, was prepared to ensure compliance with the environmental mitigation measures included as part of the final MND relative to these areas during project implementation. There have been no substantial changes to the proposed project since circulation of the environmental document.

The MND was circulated from August 12, 2009 through September 11, 2009 to the appropriate government agencies. Public Notice was then published in The Argonaut on October 8, 2009, pursuant to Public Resources Code section 21092, and posted, pursuant to section 21092.3. During the second 30-day comment period, a written response was received from the California Department of Fish and Game. In addition,

three written responses were received from the public. All comments received, as well as responses to the comments, are contained in the final MND. Individuals who sent in comments received responses to their particular comments.

The location of the documents and other materials constituting the record of the proceedings upon which your Board's decision will be based in this matter is the County of Los Angeles Department of Regional Planning, 320 West Temple Street, Los Angeles, California 90012. The custodian of such documents and materials is Anthony Curzi, County of Los Angeles Department of Regional Planning.

The project is not exempt from payment of a fee to the California Department of Fish and Game (DFG) pursuant to section 711.4 of the Fish and Game Code to defray the costs of fish and wildlife protection and management incurred by the California Department of Fish and Game. Upon your Board's adoption of the MND, the Department will file a Notice of Determination with the Registrar-Recorder/County Clerk in accordance with section 21152(a) of the California Public Resources Code, along with the Lessee's payment of the DFG required filing and processing fees in the amount of \$1,993.00.

CONTRACTING PROCESS

Lessee acquired the leasehold interest to Parcel 8T as a result of its assumption of the assigned lease as of September 27, 2005. The Lessee thereafter entered into negotiations with the Department to extend the lease term for Parcel 8T. The Amended and Restated Lease for Parcel 8T will be available to the Lessee upon the proper exercise of the Option. Upon Lessee's demonstration that it has satisfied the conditions for exercise of the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for construction of the development project associated with that Option, we will present to the Executive Officer the final confirmation that the conditions and approvals for exercise contained in the Option have been satisfied and will request at that time execution of the Amended and Restated Lease for Parcel 8T in substantially similar form to Exhibit A attached to the Option.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

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CONCLUSION

It is requested that the Executive Officer, Board of Supervisors send two copies of the executed Option and an adopted Board letter to the Department of Beaches and Harbors.

Respectfully submitted,


for
Santos H. Kreimann, Director

SK:GJ:PW:ks

Attachments (3)

c: Chief Executive Officer
Acting County Counsel
Executive Officer, Board of Supervisors

**OPTION TO AMEND LEASE AGREEMENT
(PARCEL 8T)**

THIS OPTION TO AMEND LEASE AGREEMENT ("**Agreement**") is made and entered into as of the 8th day of DECEMBER, 2009, by and between the COUNTY OF LOS ANGELES ("**County**") and NF MARINA LP, a California limited partnership ("**Lessee**").

R E C I T A L S

A. County and Vadim P. Kondratief dba V.P.K. Investment & Development Company (the "**Original Lessee**"), entered into Lease No. 4985, dated October 4, 1961, as amended (the "**Existing Lease**"), regarding the lease from County of certain real property in the Marina del Rey Small Craft Harbor now commonly known as Parcel No. 8T, as more particularly described in the Existing Lease (the "**Premises**").

B. Lessee is the current successor-in-interest to the Original Lessee's right, title and interest as lessee under the Existing Lease.

C. The term of the Existing Lease is currently scheduled to expire on June 7, 2021.

D. Lessee has requested County, and County is willing, to grant Lessee an option to extend the term of the Existing Lease through June 7, 2051, in accordance with and subject to the terms and provisions of this Agreement.

A G R E E M E N T

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. **Grant of Option.** County hereby grants to Lessee an option (the "**Option**") to extend the term of the Existing Lease through June 7, 2051 (the "**Extended Expiration Date**"). If the Option is exercised by Lessee in accordance with the terms and provisions of this Agreement, such extension of the Existing Lease shall be consummated by the parties' execution and delivery of an Amended and Restated Lease Agreement in the form attached to this Agreement as **Exhibit A** (the "**Restated Lease**").

2. **Option Term.** The term of the Option (the "**Option Term**") shall commence on the date of this Agreement and expire on that date (the "**Option Expiration Date**") that is the earlier of (a) forty-five (45) days following the date of the satisfaction of the conditions to the exercise of the Option set forth in clauses (iv), (v) and (vi) of the first paragraph of Section 3 below, or (b) the first (1st) anniversary of the date of this Agreement (the date set forth in this clause (b) is referred to herein as the "**Outside Date**").

3. **Exercise of Option.** The Option shall be exercisable by Lessee only by strict satisfaction on or before the Option Expiration Date of the following terms and conditions: (i) Lessee shall notify County in writing of its exercise of the Option; (ii) Lessee shall

accompany the notice described in the preceding clause (i) with Lessee's (A) execution and delivery to County of the Restated Lease with any blank or bracketed terms set forth in Exhibit A completed in accordance with the terms and provisions of this Agreement, and (B) payment of the amount, if any, by which the Security Deposit required under Article 7 of the Restated Lease exceeds the amount of the security deposit then maintained by Lessee with County pursuant to Section 7 of the Existing Lease; (iii) as of the date of Lessee's delivery of the notice described in clause (i) above Lessee shall not be in material breach or default of any term or provision of the Existing Lease, after notice from County and the expiration of any applicable cure period thereunder; (iv) the Entitlement Conditions (as defined below) shall have been satisfied and as of the date of Lessee's exercise of the Option shall continue to be satisfied; (v) Lessee shall have provided County satisfactory evidence of having obtained commitments for the "Project Financing" (as defined below); and (vi) the Director of the Department of Beaches and Harbors of the County ("**Director**") shall have approved all plans, specifications and other materials for the Redevelopment Work required to be submitted to Director pursuant to Section 5.3 of this Agreement.

Upon Lessee's proper and timely exercise of the Option, County shall execute and deliver the Restated Lease not later than forty-five (45) days following the date of Lessee's exercise of the Option. The Effective Date of the Restated Lease (as defined in the Restated Lease) shall be the date the Restated Lease is executed and delivered by County, which date shall be inserted into page 1 of the Restated Lease concurrent with County's execution and delivery thereof. If Lessee's construction financing for the Redevelopment Work is in a position to close within the above forty-five (45) day period, County agrees to cooperate with Lessee to effectuate a concurrent closing of such construction financing and County's delivery of the Restated Lease such that the Effective Date of the Restated Lease is the same as the date of the close of Lessee's construction financing; provided, however, in no event shall County be required to delay the execution and delivery of the Restated Lease beyond the foregoing forty-five (45) day period if Lessee's construction financing is not in a position to close within such period. In connection with Lessee's construction financing, County agrees to cooperate with regard to the execution and delivery by County of a ground lessor estoppel certificate with respect to the Restated Lease, on such terms and in such form as acceptable to County.

For purposes hereof, the "**Entitlement Conditions**" shall mean the following conditions: (a) Lessee shall have received all discretionary planning, zoning and other entitlement approvals required to be obtained from governmental authorities for the construction of the Redevelopment Work, including without limitation, approvals required by the Design Control Board, Department of Regional Planning, County Board of Supervisors (if applicable) and the California Coastal Commission (the "**Entitlements**"), (b) any appeal period to contest the issuance of the Entitlements shall have lapsed, and (c) there shall be no legal action or proceeding pending to appeal or contest the issuance of the Entitlements or to enjoin or restrain the performance of the Redevelopment Work. For purposes of this Agreement, the "Redevelopment Work" shall have the meaning given such term in Section 5.1 of the Restated Lease.

For purposes hereof, the "**Project Financing**" shall mean a construction loan and a commitment for permanent financing, from an institutional lender or lenders, at an interest rate or rates, and on terms that are commercially reasonable, in amounts that when combined with Lessee's equity will provide sufficient funds to complete the Redevelopment Work, all as approved by Director in accordance with Section 12.1 of the Restated Lease.

4. Option Fee. In consideration of County's grant of the Option to Lessee, Lessee shall pay to County concurrent with Lessee's execution of this Agreement the sum of One Hundred Thousand Dollars (\$100,000.00) (the "**Option Fee**"). The Option Fee shall be non-refundable except in the case of a termination of this Agreement due to a County Default (as defined in Section 9.2 below) under this Agreement.

5. Entitlements and Plan Preparation During Option Term.

5.1 Obtaining Entitlements. Prior to the date of this Agreement Lessee has obtained a portion of the Entitlements required for the Redevelopment Work. Lessee agrees to use its diligent efforts to obtain all remaining Entitlements and to satisfy the Entitlement Conditions as soon as reasonably possible following the date of this Agreement.

5.2 County Cooperation. In its proprietary capacity, the Department of Beaches and Harbors of the County of Los Angeles (the "**Department**") shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the remaining Entitlements. Such cooperative efforts may include the Department's joinder in any application for the Entitlements where joinder therein by the Department is required or helpful; provided, however, that Lessee shall reimburse County for the Actual Costs (as defined in the Restated Lease) incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding the foregoing, Lessee and County acknowledge that (a) the approvals given by County under this Agreement or the Restated Lease shall be approvals pursuant to its authority under Sections 25907 and 25536 of the California Government Code and given in its proprietary capacity; (b) any approvals given under this Agreement or the Restated Lease in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the construction of the Redevelopment Work and operation and other use of the Premises; and (c) the Department's duty to cooperate and County's approvals under this Agreement or the Restated Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Agreement or the Restated Lease.

5.3 Plans and Specifications for Redevelopment Work. The Redevelopment Work shall be constructed by Lessee in accordance with and subject to the terms and provisions of Article 5 of the Restated Lease. The requirements of Article 5 of the Restated Lease include, without limitation, the obligation of Lessee to prepare and submit to the Director for the Director's approval certain plans, specifications, construction cost estimates and other materials pertaining to the Redevelopment Work, as set forth in more detail in Section 5.3 of the Restated Lease. The procedure for the preparation, submittal and approval of the plans, specifications, construction cost estimates and other materials shall generally proceed in accordance with the terms and provisions of the Restated Lease, except that during the period commencing on the date of this Agreement and expiring on the earlier of Lessee's exercise of the Option or the Option Expiration Date, Lessee shall prepare and submit to Director for Director's approval, any portions of the plans, specifications and other materials described in Section 5.3 of the Restated Lease that are required to be submitted to governmental authorities (including the County, the Design Control Board and the California Coastal Commission) in connection with Lessee's applications for or receipt of the Entitlements for the Redevelopment Work. Lessee shall accompany such plans, specifications and other materials with the construction cost

estimates described in Section 5.3 of the Restated Lease, as applicable. The standards and time periods for Director's review and approval of the materials submitted by Lessee pursuant to this Section 5.3 shall be in accordance with the terms and provisions of Section 5.3 of the Restated Lease, which terms and provisions are hereby incorporated into this Agreement by reference. Such plans, specifications and other materials shall be prepared and submitted to Director by Lessee in accordance with a schedule which shall facilitate Lessee's satisfaction of all conditions precedent to the exercise of the Option on or before the Option Expiration Date. In addition to the plans, specifications and materials required to be submitted by Lessee to Director pursuant to this Section 5.3, Lessee shall have the right, at its election, but not the obligation, to deliver to Director, for Director's approval, additional plans, specifications and materials pertaining to the Redevelopment Work. Director shall notify Lessee of its approval or disapproval of such additional plans, specifications and materials within the time frames and in accordance with the requirements of Section 5.3 of the Restated Lease. Notwithstanding the foregoing, County acknowledges that prior to the date of this Agreement Director has reviewed and approved the schematic plans and narrative description of the Redevelopment Work required under Subsection 5.3.1 of the Restated Lease. Such approved schematic plans and narrative description of the Redevelopment Work are set forth or referenced in the Renovation Plan attached as Exhibit B to the Restated Lease.

6. Delay in Exercise of Option.

6.1 Delay in Receipt of Entitlements. If Lessee submits all applications for the remaining Entitlements on a timely basis and diligently and continuously processes such applications for Entitlements as soon as reasonably possible after the date of this Agreement, but despite such efforts Lessee is unable to obtain the remaining Entitlements prior to the first (1st) anniversary of the date of this Agreement, then the Director may, in the exercise of its reasonable discretion, grant Lessee one or more extensions of the Outside Date. Any such extension shall be limited to the period required for Lessee's receipt of the remaining Entitlements assuming the diligent and continuous prosecution by Lessee of the applications for such Entitlements as soon as reasonably possible thereafter, and in no event shall such extensions, in the aggregate, extend beyond the second (2nd) anniversary of the date of this Agreement. If Director shall determine not to grant Lessee an extension as provided above, then Lessee shall have the right, within thirty (30) days following Director's denial, to submit a written request to the Board of Supervisors of County to reconsider such denial by the Director.

Director shall have no discretion or obligation to extend the Outside Date under this Section 6.1 at any time during which there is an uncured Lessee Breach (as defined in Section 9.1 below) under this Agreement and County has provided Lessee with written notice of such Lessee Breach, or at any time during which there is an uncured event of default under Section 21.A. of the Existing Lease. Lessee shall notify the Department of any delay incurred by Lessee in the receipt of the remaining Entitlements with reasonable promptness following Lessee first becoming aware of the delay. If Lessee desires to have the Outside Date extended pursuant to this Section 6.1, then Lessee must deliver written notice to Director of its request for the extension not later than thirty (30) days prior to the Outside Date, as such date may have been previously extended; provided, however, that if the basis for the extension does not arise until later than thirty (30) days prior to the Outside Date, then Lessee shall be required to deliver its written request for the extension promptly following its discovery of the basis for the requested extension.

6.2 Contest Delay Prior to Receipt of Entitlements. If as of the Outside Date (as the Outside Date may have been extended pursuant to Section 6.1 above) the Entitlements have not been received (i) because the Redevelopment Work is the subject of a pending proceeding or litigation brought by a third party to contest or appeal the issuance of the Entitlements or to enjoin or restrain the performance of the Redevelopment Work, or (ii) because of a moratorium, temporary restraining order, injunction or other court order which prohibits the issuance of the Entitlements for the Redevelopment Work and all other similar marina adjacent projects in Marina del Rey, then as long as Lessee continues to diligently prosecute or pursue the defense or removal of such proceeding, litigation, moratorium or court order, the Option Expiration Date shall be extended until not later than forty-five (45) days following the date that such proceeding, litigation, moratorium or court order is resolved in favor of the validity of the Entitlements (with no further right of appeal); provided, however, in no event shall the Option Expiration Date be extended beyond the third (3rd) anniversary of the date of this Agreement. Lessee shall not be required to pay County a fee for any extension of the Option Expiration Date pursuant to this Section 6.2. Notwithstanding any contrary provision hereof, in no event shall the Option Expiration Date be extended at any time during which there is an uncured Lessee Default under this Agreement or at any time during which there is an uncured event of default under Section 21.A. of the Existing Lease.

6.3 Contest Delay After Receipt of Entitlements. If Lessee obtains the Entitlements on or before the Outside Date (as the Outside Date may have been extended pursuant to Section 6.1 or 6.2 above), but the issuance of such Entitlements is contested by appeal or litigation brought by a third party, then upon the written request of Lessee, and provided that Lessee continues to use its diligent efforts to contest the appeal or litigation, Director shall extend the Option Expiration Date until forty-five (45) days after a final order or decision on such appeal or litigation is issued or such appeal or litigation is dismissed or otherwise resolved; provided, however, in no event shall the Option Expiration Date be extended beyond the third (3rd) anniversary of the date of this Agreement. For purposes of Section 6.2 above and this Section 6.3, a "**third party**" shall mean any person or entity other than (a) Lessee or any person or entity with any direct or indirect interest in Lessee, or (b) the governmental agency, commission, board or other instrumentality that issued (or has been requested to issue) the Entitlement that is the subject of the appeal or litigation. Lessee shall not be required to pay to County a fee for any extension of the Option Expiration Date pursuant to this Section 6.3. Notwithstanding any contrary provision hereof, in no event shall the Option Expiration Date be extended at any time during which there is an uncured Lessee Default under this Agreement or at any time during which there is an uncured event of default under Section 21.A. of the Existing Lease.

6.4 Delay For Unreasonable Financial Market Condition. Lessee shall use good faith, diligent efforts to obtain the Project Financing prior to the Option Expiration Date. Commencing not later than four (4) months prior to the expected Option Expiration Date set forth in Section 2 of this Agreement (without extension pursuant to Section 6 of this Agreement) and continuing every sixty (60) days thereafter (or more often in response to written (including electronic mail) inquiry by the Department, but not more often than monthly) until the Option is exercised, Lessee shall inform Director of Lessee's efforts to obtain, and the status of, the Project Financing. If Lessee is unable to obtain a commitment (or commitments) for the Project Financing by not later than two (2) months prior to the expected Option Expiration Date, or, if after receipt of such commitment, such commitment is withdrawn or Lessee is unable to

satisfy the requirements for funding, then Lessee shall provide written notice to Director of such occurrence (the "**Financing Delay Notice**"). In the case of the inability to obtain a commitment (or commitments) for the Project Financing by not later than two (2) months prior to the expected Option Expiration Date, Lessee must deliver the Financing Delay Notice not later than two (2) months prior to the expected Option Expiration Date. In the case of the withdrawal or inability to satisfy the requirements for funding of a commitment, Lessee must deliver the Financing Delay notice not later than three (3) business days after such commitment is withdrawn or Lessee become aware of the inability to satisfy the requirements for the funding of such commitment. The Financing Delay Notice shall include a description of Lessee's efforts to obtain the Project Financing and the status of those efforts, including any potential financing sources and the terms and requirements applicable to any such potential financing sources. If (a) Lessee has satisfied the Entitlement Conditions and the condition set forth in clause (vi) of the first paragraph of Section 3 of this Agreement, but has been unable to obtain Project Financing; (b) Lessee provides the Financing Delay Notice on a timely basis as provided above, (c) Lessee has exercised, and thereafter continues to exercise, its good faith, diligent efforts to obtain the Project Financing, and keeps the Department apprised of such efforts as provided above, (d) Lessee continues to be unable to obtain the Project Financing by the expected Option Expiration Date (as otherwise extended under this Agreement), and (e) the reason for Lessee's inability to obtain the Project Financing is the continued existence of an Unreasonable Financial Market Condition (as defined below), then the Option Expiration Date shall be extended until Lessee obtains the Project Financing, as long as the conditions set forth in clauses (a) through (e) of this sentence continue to be applicable during such period of delay. Notwithstanding the foregoing, in no event shall the Option Expiration Date be extended beyond the third (3rd) anniversary of the date of this Agreement.

For purposes of this Agreement, "**Unreasonable Financial Market Condition**" means an industry-wide commercially adverse condition, beyond Lessee's reasonable control, in the Los Angeles metropolitan area real estate construction and permanent financing markets for projects that include the construction or substantial rehabilitation of luxury rental housing units, such that, notwithstanding Lessee's exercise of good faith, diligent efforts, Lessee has been unable to secure Project Financing satisfying the Financing Criterion (as defined below) and it would have been unlikely that other developers could have obtained such Project Financing. For purposes hereof, the "**Financing Criterion**" mean construction and permanent financing on the following terms: (v) the lender is an institutional lender; (w) a loan to value ratio that is not required by the lender to be less than 65%; (x) with respect to construction financing, a completion guaranty is required from an entity with a net worth that is not required by the lender to exceed 3 times the total construction costs; (y) with respect to permanent financing, the loan is non-recourse subject to industry standard non-recourse carve-outs that are guaranteed by an entity with a net worth that is not required by the lender to exceed 3 times the amount of the loan; and (z) that is otherwise on commercially reasonable terms and is approved by County pursuant to Section 12.1 of the Restated Lease. There shall be no extension of the Option Expiration Date pursuant to this Section 6.4 unless Lessee demonstrates to the reasonable satisfaction of the Director that the requirements for such extension set forth herein have been met, including the occurrences, conditions or circumstances that constitute an Unreasonable Financial Market Condition. If Lessee and the Director are unable to resolve any dispute as to (i) whether an Unreasonable Financial Market Condition exists, (ii) whether the other requirements for an extension of the Option Expiration Date under this Section 6.4 have been satisfied, or (iii)

the duration of the extension to which Lessee is entitled, then the dispute shall be arbitrated pursuant to the same arbitration of disputes provision as set forth in Article 16 of the Restated Lease. Notwithstanding any contrary provision hereof, in no event shall the Option Expiration Date be extended at any time during which there is an uncured Lessee Default under this Agreement or at any time during which there is an uncured event of default under Section 21.A. of the Existing Lease.

7. Non-Exercise Lease Amendment. If Lessee does not exercise the Option on or before the Option Expiration Date (or the Option is not exercisable by the Option Expiration Date), then (a) the Option shall automatically terminate, and (b) the Existing Lease shall be considered to be automatically amended effective as of the Option Expiration Date (the **"Effective Amendment Date"**) as follows (the **"Non-Exercise Amendment"**):

(i) amend and restate Section 18 of the Existing Lease in full in accordance with Sections 2.2 and 2.3 of the Restated Lease;

(ii) add Article 16 of the Restated Lease to the Existing Lease, and amend Section 15 of the Existing Lease to provide for the determination and resolution of square foot and percentage rental adjustments under Section 15 of the Existing Lease in accordance with the terms, provisions and procedures set forth in Subsections 4.4.2 through 4.4.5 and Article 16 of the Restated Lease (for purposes hereof, all references in such Subsections 4.4.2 through 4.4.5 to (I) "Renegotiation Date" shall mean and refer to each respective date on which the 10-year square foot and percentage rental adjustments are to be effective under Section 15 of the Existing Lease; (II) "Fair Market Rental Value" shall mean and refer to the fair market value referenced in Section 15 of the Existing Lease; and (III) "Annual Minimum Rent" and "Percentage Rent" shall mean and refer to the square foot and percentage rentals referenced in the Existing Lease);

(iii) amend and restate Sections 22A and 22C of the Existing Lease in full in accordance with Sections 11.1, 11.2 (excepting Subsections 11.2.4 and 11.2.5) and 11.3 of the Restated Lease;

(iv) add the last four (4) sentences of Section 4.5 of the Restated Lease to the Existing Lease;

(v) amend and restate Section 7 of the Existing Lease in full in accordance with Article 7 of the Restated Lease, except that all references to Section 10.4 shall be changed to Article 35;

(vi) amend Sections 26 and 27 of the Existing Lease to adjust the amount and scope of commercial general liability, automobile liability, garagekeeper's legal liability, workers compensation and employer's liability insurance coverage required to be carried by Lessee to equal the amounts and coverages set forth in Subsections 9.1.1, 9.1.2 and 9.1.3 of the Restated Lease, to add to Section 26 of the Existing Lease the provisions of Subsection 9.1.7 of the Restated Lease, and to add to Section 26 of the Existing Lease the provisions of Section 9.6 of the Restated Lease;

(vii) amend and restate Sections 8 and 10 of the Existing Lease in accordance with Sections 5.3, 5.4, 5.7, 5.8, 5.9 and 5.10 of the Restated Lease, except that all references to the "Redevelopment Work" shall be deleted and the terms and conditions of such Sections shall be applicable only to "Alterations;"

(viii) amend and restate Sections 30, 31 and 32 of the Existing Lease in full in accordance with Article 14 of the Restated Lease, except that all references in Article 14 of the Lease to "Net Proceeds Share," "Net Refinancing Proceeds" and "Permitted Capital Expenditures" shall be deleted; and

(ix) incorporate into the Existing Lease the definitions of capitalized terms used in the Restated Lease to the extent such terms are used in this Non-Exercise Amendment pursuant to clauses (i) through (viii) above.

For purposes of the Non-Exercise Amendment, all references in the Restated Lease to the "Effective Date" shall mean and refer to the Effective Amendment Date set forth above. Within thirty (30) days after request by County, County and Lessee shall execute and deliver a written document confirming the modifications to the Existing Lease set forth in this Section 7, but neither the failure of County to request, nor the parties' failure to execute, such written document shall affect the Non-Exercise Amendment, which in all events shall become automatically effective as of the Option Expiration Date if Lessee does not exercise the Option on or before the Option Expiration Date (or the Option is not exercisable by the Option Expiration Date) other than due to a County Default under this Agreement or a breach that will become a County Default if County does not cure such breach within thirty (30) days.

8. County Costs. Regardless of whether Lessee exercises the Option, within thirty (30) days after written request from County, Lessee shall promptly reimburse County for the Actual Costs (as defined in the Restated Lease) incurred by County in the review, negotiation, preparation and documentation of the Restated Lease, this Agreement and the term sheets and memoranda that preceded this Agreement.

9. Definitions of Breaches and Defaults.

9.1 For purposes of this Agreement, a "**Lessee Breach**" means a failure of Lessee to perform or comply with any material obligation or covenant of Lessee under this Agreement. For purposes of this Agreement, a "**Lessee Default**" means Lessee's failure to cure a Lessee Breach within (a) ten (10) days after Lessee's receipt of written notice from County in the case of the payment of money, or (b) within thirty (30) days after Lessee's receipt of written notice from County in the case of any other obligation or covenant of Lessee under this Agreement; provided, however, that if the nature of the Lessee Breach under this clause (b) is such that it cannot with reasonable diligence be cured within thirty (30) days, then the cure period set forth in this clause (b) shall be extended for such additional period as reasonably required for the cure of the Lessee Breach as long as Lessee commences cure of the Lessee Breach within thirty (30) days after Lessee's receipt of written notice from County and diligently prosecutes such cure to completion.

9.2 For purposes of this Agreement, a "**County Default**" means a breach by County of any material obligation or covenant of County under this Agreement and

County's failure to cure such breach within thirty (30) days after County's receipt of written notice from Lessee; provided, however, that if the nature of the County breach is such that it cannot with reasonable diligence be cured within thirty (30) days, then the thirty (30) day cure period shall be extended for such additional period as reasonably required for the cure by County of the breach as long as County commences cure of the breach within thirty (30) days after County's receipt of written notice from Lessee and diligently prosecutes such cure to completion.

10. Miscellaneous.

10.1 Time is of the Essence. Time is of the essence of this Agreement, including, without limitation, with respect to all times, restrictions, conditions and limitations set forth herein.

10.2 Waivers. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms or provisions of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or provision of this Agreement, nor shall failure on the part of either party to require exact, full and complete compliance with any of the covenants, conditions, terms or provisions of this Agreement be construed to in any manner change the terms hereof or estop that party from enforcing the full provisions hereof.

10.3 Notices. All notices required or permitted to be given under this Agreement shall be given in accordance with the terms and provisions of Section 15.10 of the Restated Lease.

10.4 Captions. The captions contained in this Agreement are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Agreement.

10.5 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Agreement, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation, attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party.

10.6 No Assignment. Lessee shall have no right to assign or transfer its rights or obligations under this Agreement to any other person or entity, without the express written consent of County, which consent may be withheld by County in its sole and absolute discretion. Notwithstanding the foregoing, Lessee shall have the right to assign all of its rights and interest under this Agreement to an assignee that acquires all of Lessee's rights and interest under the Existing Lease pursuant to an assignment of the Existing Lease that is either (a) approved by County in accordance with the terms and provisions of the Existing Lease, or (b) does not require County's approval under the Existing Lease, if applicable.

10.7 Entire Agreement. This Agreement sets forth the full and complete understanding of the parties relating to the subject matter hereof, and supercedes any

and all agreements, understandings and representations made prior hereto with respect to such matters.

10.8 Joint Effort. Preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not be construed more severely against one of the parties than against the other.

10.9 Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

10.10 Counterparts. This Agreement may be executed in any number of counterparts. Each counterpart shall represent an original of this Agreement and all such counterparts shall collectively constitute one fully-executed document.

10.11 Successors and Assigns. Subject to Section 10.6 above, the rights and obligations of the parties under this Agreement shall be binding upon the parties' respective successors and assigns.

10.12 Exhibits. Exhibit A attached to this Agreement is hereby expressly incorporated herein by reference.

10.13 Representation Regarding Existing Encumbrances. Lessee represents and warrants to County that as of the date of this Agreement there are no deeds of trust, mortgages or other security interests that encumber Lessee's interest in the Existing Lease or the Premises other than the "Deed of Trust" referenced in the Lender Consent attached to this Agreement. The grant of the Option set herein is contingent upon (a) the accuracy of the foregoing representation and warranty, and (b) the execution by the beneficiary of such Deed of Trust and delivery to County of such executed Lender Consent concurrent with the execution and delivery of this Agreement by Lessee and County.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, County and Lessee have entered into this Agreement as of the day and year first written above.

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
ACTING COUNTY COUNSEL

By: 

Deputy

THE COUNTY OF LOS ANGELES

By: 

Chair, Board of Supervisors

NF MARINA LP, a California limited partnership

By: NFM LLC, a California limited liability company, its General Partner

By: 

Jack Nagel, Managing Member

ATTEST:

SACHI A. HAMAI,
Executive Officer of the Board
of Supervisors

By: 

Deputy



APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: 

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

20

DEC 08 2009


SACHI A. HAMAI
EXECUTIVE OFFICER

LENDER CONSENT

The undersigned represents that it is the current beneficiary under that certain [Deed of Trust With Assignment of Rents dated _____, and recorded in the Official Records of Los Angeles County, California on _____ as Instrument No. _____ (the "**Deed of Trust**"). As such beneficiary the undersigned hereby consents to the foregoing Option to Amend Lease Agreement and agrees that the Deed of Trust is subject and subordinate to such Option to Amend Lease Agreement.

_____, a

By: _____
Name: _____
Its: _____

EXHIBIT A
RESTATED LEASE

AMENDED AND RESTATED LEASE AGREEMENT

by and between

COUNTY OF LOS ANGELES

and

NF MARINA LP

(Parcel 8T -- Lease No. _____)

Dated as of _____, _____

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**AMENDED AND RESTATED LEASE AGREEMENT
PARCEL 8T — MARINA DEL REY**

THIS AMENDED AND RESTATED LEASE AGREEMENT (“**Lease**”) is made and entered into as of the ____ day of _____, ____ (“**Effective Date**”), by and between the COUNTY OF LOS ANGELES (“**County**”), as lessor, and NF MARINA LP, a California limited partnership (together with its permitted successors and assigns, “**Lessee**”), as lessee.

RECITALS

WHEREAS, County and Vadim P. Kondratief dba V.P.K. Investment & Development Company (the “**Original Lessee**”), entered into Lease No. 4985, dated October 4, 1961 (as amended prior hereto, the “**Existing Lease**”), pursuant to which Lessee has leased from County that certain real property in the Marina del Rey Small Craft Harbor now commonly known as Parcel No. 8T and which is more specifically described on Exhibit A attached hereto and incorporated herein by this reference (the “**Premises**”), the term of which commenced on June 8, 1961 and was originally scheduled to expire on June 7, 2021 (the “**Existing Expiration Date**”); and

WHEREAS, Lessee is the current successor-in-interest to the Original Lessee’s right, title and interest as lessee under the Existing Lease; and

WHEREAS, County and Lessee entered into that certain Option to Amend Lease Agreement (Parcel 8T) dated as of _____, 2009 (the “**Option Agreement**”), pursuant to which County granted Lessee an option (the “**Option**”) to amend and restate the Existing Lease in its entirety, upon the terms and conditions more specifically provided herein, including, without limitation, (i) the extension of the term of the Existing Lease through June 7, 2051, and (ii) the renovation of the land-side improvements on the Premises and the replacement of all anchorage improvements on the Premises, all in accordance with the terms and provisions set forth in this Lease; and

WHEREAS, Lessee has exercised the Option in accordance with the terms and provisions of the Option Agreement.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Lessee agree that the Existing Lease is hereby amended and restated in its entirety, as follows:

1. **BACKGROUND AND GENERAL.**

1.1 **Definitions.** The defined terms in this Lease shall have the following meanings:

1.1.1 “**ACTUAL COST**” shall mean (i) the reasonable out-of-pocket costs and expenses incurred by County with respect to a particular activity or procedure, including without limitation, expenditures to third party legal counsel, financial consultants and advisors (including the use of County’s environmental consultant), (ii)



costs incurred in connection with appraisals, (iii) the reasonable value of services actually provided by County's in-house counsel, and (iv) the reasonable value of services actually provided by County's lead lease negotiator/administrator and any other lease auditors and other County administrative staff below the level of deputy director (the administrative level which is two levels below County department head) required by the lead lease negotiator/administrator for technical expertise or assistance. In those instances in which Lessee is obligated to reimburse County for its Actual Costs incurred in performing obligations required to be performed by Lessee under this Lease which Lessee fails to perform within the applicable cure period, if any, provided under this Lease, Actual Costs shall also include a reasonable allocation of County overhead and administrative costs to compensate County for performing such obligations on behalf of Lessee.

1.1.2 "ADA" shall have the meaning set forth in Section 1.2.1.

1.1.3 "ADDITIONAL DISPUTES" shall have the meaning set forth in Section 16(a).

1.1.4 "ADJUSTMENT DATES" shall have the meaning set forth in Section 4.3.

1.1.5 "ADMINISTRATIVE CHARGE" shall have the meaning set forth in Section 4.6.

1.1.6 "AGGREGATE TRANSFER" shall have the meaning set forth in Subsection 4.6.3.

1.1.7 "ALTERATIONS" shall have the meaning set forth in Section 5.2.

1.1.8 "ANCHORAGE IMPROVEMENTS" shall have the meaning set forth in Section 5.1.

1.1.9 "ANTENNAE" shall have the meaning set forth in Subsection 3.2.2.5.

1.1.10 "ANNUAL MINIMUM RENT" shall have the meaning set forth in Subsection 4.2.1.

1.1.11 "ANNUAL RENT" shall have the meaning set forth in Section 4.2.

1.1.12 "APPLICABLE LAWS" shall have the meaning set forth in Subsection 1.2.1.

1.1.13 "APPLICABLE RATE" shall mean an annually compounded rate of interest equal to the lesser of (a) ten percent (10%) per annum or (b) the Prime Rate, as defined in Subsection 4.4.5, plus three percent (3%) per annum; provided, however, that the Applicable Rate shall in no event exceed the maximum rate of interest which may be charged pursuant to Applicable Laws.



1.1.14 "APPROVED APARTMENT/SLIP LEASE" shall have the meaning set forth in Subsection 11.1.2.

1.1.15 "APPROVED GOVERNMENTAL CHANGES" shall mean any changes to the Redevelopment Work (or other Alterations, as applicable) required by the California Coastal Commission or other applicable governmental agency as a condition to the issuance of required governmental permits and approvals for such Redevelopment Work (or other Alterations, as applicable), except for any change that is a Material Modification.

1.1.16 "ASSIGNMENT STANDARDS" shall have the meaning set forth in Section 11.2.

1.1.17 "AUDITOR-CONTROLLER" shall mean the Auditor-Controller of the County of Los Angeles, California.

1.1.18 "AWARD" shall have the meaning set forth in Subsection 6.1.3.

1.1.19 "BASE VALUE" shall have the meaning set forth in Subsection 4.8.1.1.

1.1.20 "BENEFICIAL INTEREST" shall have the meaning set forth in Subsection 4.6.4.

1.1.21 "BOARD" shall mean the Board of Supervisors for the County of Los Angeles.

1.1.22 "BUSINESS DAY" shall have the meaning set forth in Section 17.3.

1.1.23 "CALCULATION NOTICE" shall have the meaning set forth in Section 4.7.

1.1.24 "CAPITAL IMPROVEMENT FUND" shall have the meaning set forth in Section 5.13.

1.1.25 "CHANGE OF OWNERSHIP" shall have the meaning set forth in Subsection 4.6.1.

1.1.26 "CHANGE OF CONTROL" shall have the meaning set forth in Subsection 4.6.1.

1.1.27 "CITY" shall mean the City of Los Angeles, California.

1.1.28 "COMPLETION DATE" shall mean the date of receipt of a certificate or certificates of occupancy (whether temporary or permanent) or other applicable governmental permit(s), certificate(s) or approval(s) in connection with the Redevelopment Work permitting the legal occupancy of at least 195 of the renovated apartment units.

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1.1.29 "CONDEMNATION" shall have the meaning set forth in Subsection 6.1.1.

1.1.30 "CONDEMNOR" shall have the meaning set forth in Subsection 6.1.4.

1.1.31 "CONSUMER PRICE INDEX" shall mean the Consumer Price Index-- All Urban Consumers for Los Angeles-Riverside-Orange County, as published from time to time by the United States Department of Labor or, in the event such index is no longer published or otherwise available, such replacement index as may be reasonably agreed upon by County and Lessee.

1.1.32 "COST" shall have the meaning set forth in Subsection 4.2.2.3(6).

1.1.33 "COUNTY" shall have the meaning set forth in the first paragraph of this Lease.

1.1.34 "COUNTY OPTION" shall have the meaning set forth in Subsection 11.2.4.

1.1.35 "COUNTY OPTION PRICE" shall have the meaning set forth in Subsection 11.2.4.

1.1.36 "COUNTY POOL RATE" shall have the meaning set forth in Subsection 4.4.5 of this Lease.

1.1.37 "CREDIT PERIOD" shall have the meaning set forth in Subsection 4.2.2(a).

1.1.38 "DATE OF TAKING" shall have the meaning set forth in Subsection 6.1.2.

1.1.39 "DEFAULT TERMINATION" shall have the meaning set forth in Subsection 2.3.2.

1.1.40 "DEMOLITION AND REMOVAL REPORT" shall have the meaning set forth in Subsection 2.3.2.

1.1.41 "DEMOLITION SECURITY" shall have the meaning set forth in Subsection 2.3.2.

1.1.42 "DEPARTMENT" shall mean the Department of Beaches and Harbors of the County of Los Angeles.

1.1.43 "DIRECTOR" shall mean the Director of the Department of Beaches and Harbors of the County of Los Angeles or any successor County officer responsible for the administration of this Lease.

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1.1.44 "DISQUALIFICATION JUDGMENT" shall have the meaning set forth in Subsection 16.14.1.

1.1.45 "DOCUMENTED TRANSACTION COSTS" shall have the meaning set forth in Subsection 4.8.1.2.

1.1.46 "EFFECTIVE DATE" shall have the meaning set forth in the first paragraph of this Lease.

1.1.47 "ENCUMBRANCE" shall have the meaning set forth in Subsection 12.1.1.

1.1.48 "ENCUMBRANCE HOLDER" shall have the meaning set forth in Subsection 12.1.1.

1.1.49 "ENR INDEX" shall mean the Engineering News Record (ENR) Construction Cost Index for the Los Angeles Area, or such substitute index upon which the parties may reasonably agree if such index is no longer published or otherwise available.

1.1.50 "ESTIMATED COSTS" shall have the meaning set forth in Subsection 2.3.2.

1.1.51 "EVENTS OF DEFAULT" shall have the meaning set forth in Section 13.1.

1.1.52 "EXCLUDED TRANSFERS" shall have the meaning set forth in Subsection 4.6.2.

1.1.53 "EXISTING EXPIRATION DATE" shall have the meaning set forth in the first paragraph of the Recitals to this Lease.

1.1.54 "EXISTING LEASE" shall have the meaning set forth in the first paragraph of the Recitals to this Lease.

1.1.55 "EXCESS PERCENTAGE RENT PAYMENT" shall have the meaning set forth in Subsection 4.2.2.4.

1.1.56 "EXTENDED TIME" shall have the meaning set forth in Section 15.15.

1.1.57 "FAIR MARKET RENTAL VALUE" shall have the meaning set forth in Subsection 4.4.1.

1.1.58 "FINAL PLANS AND SPECIFICATIONS" shall have the meaning set forth in Subsection 5.3.3.

1.1.59 "FINANCING EVENT" shall have the meaning set forth in Section 12.1.

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1.1.60 "FIRST ADJUSTMENT DATE" shall have the meaning set forth in Subsection 4.2.1.

1.1.61 "FORCE MAJEURE" shall mean any inability of a party to perform any non-monetary obligation under this Lease due to fire, storm, storm surge or tsunami, earthquake, high wind, other casualty or acts of God, civil riots, war, terrorist act, embargo, governmental order, industry-wide strikes or organized labor disputes, or other similar causes beyond the reasonable control of the party required to perform the subject obligation. In the case of the construction by Lessee of the Redevelopment Work, "Force Majeure" shall also include a hidden condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Premises which was not known to Lessee as of the commencement of such construction.

1.1.62 "GROSS ERROR" shall have the meaning set forth in Subsection 16.15.4.

1.1.63 "GROSS RECEIPTS" shall have the meaning set forth in Subsection 4.2.2.3.

1.1.64 "GROSS TRANSFER PROCEEDS" shall have the meaning set forth in Section 4.8.

1.1.65 "HAZARDOUS SUBSTANCES" shall mean the following:

(a) petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

(b) any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive; and

(c) any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "solid waste" or similarly defined substance pursuant to any Applicable Laws.

1.1.66 "IMPROVEMENTS" means all buildings, structures, fixtures, fences, fountains, walls, paving, parking areas, driveways, walkways, plazas, landscaping, permanently affixed utility systems, slips, end-ties and other anchorage improvements, and other improvements now or hereafter located on the Premises.

1.1.67 "IMPROVEMENT COSTS" shall have the meaning set forth in Subsection 4.8.1.1.

1.1.68 "INCOME APPROACH" shall have the meaning set forth in Section 6.5.

1.1.69 "INITIAL CURE PERIOD" shall have the meaning set forth in Subsection 12.4.1(2)(a).



1.1.70 "INITIATING PARTY" shall have the meaning set forth in Section 16 (a).

1.1.71 "INSTITUTIONAL LENDER" shall have the meaning set forth in Subsection 12.1.3.1.

1.1.72 "INSURANCE RENEGOTIATION DATE" shall have the meaning set forth in Section 9.6.

1.1.73 "LATE FEE" shall have the meaning set forth in Section 4.5.

1.1.74 "LEASE" shall have the meaning set forth in the first paragraph above.

1.1.75 "LEASE YEAR" shall have the meaning set forth in Section 2.1.

1.1.76 "LESSEE" shall have the meaning set forth in the first paragraph of this Lease.

1.1.77 "LESSEE SALE PRICE" shall have the meaning set forth in Subsection 11.2.4.

1.1.78 "MAJOR SUBLEASE" shall have the meaning set forth in Subsection 11.1.1.

1.1.79 "MAJOR SUBLESSEE" shall have the meaning set forth in Subsection 11.1.1.

1.1.80 "MATERIAL MODIFICATION" shall mean a modification to the Redevelopment Work (or other Alterations, as applicable) with respect to which any one of the following applies: (1) the total cost of the modifications exceeds the greater of (a) One Hundred Thousand Dollars (\$100,000.00), adjusted annually to reflect the percentage change in the ENR from the Effective Date to the date on which the modification is requested, or (b) one percent (1%) of the total estimated construction cost of the Redevelopment Work (or the other Alterations that are then proposed to be constructed by Lessee); (2) the proposed modification is structural in nature; (3) the modification materially affects or is visible from the exterior of the Improvements; (4) the modification is not in compliance with the Permitted Uses under this Lease; or (5) the modification (a) changes the total square footage of the Improvements by more than two percent (2%), (b) changes the total number of apartment units, (c) reduces the number of parking spaces, except for a reduction in the number of parking spaces consistent with the reduction in the number of parking spaces required for the Improvements under Applicable Law (without variance) resulting from either a reduction in the square footage of the Improvements, a reduction in the number of units of the Improvements or another permitted modification to the Improvements or their use, (d) changes the number of anchorage slips or end-ties, or (e) alters the Promenade.

1.1.81 "MINIMUM STANDARDS" shall mean the requirements of Policy Statement No. 25 and the Specifications and Minimum Standards of Architectural



Treatment and Construction for Marina del Rey approved in 1989, as modified by County or the Department from time to time in a manner consistent with commercially reasonable standards applicable to other comparable residential apartment project and marina facilities in Marina del Rey.

1.1.82 "MONTHLY MINIMUM RENT" shall have the meaning set forth in Subsection 4.2.1.

1.1.83 "NET AWARDS AND PAYMENTS" shall have the meaning set forth in Section 6.7.

1.1.84 "NET PROCEEDS SHARE" shall have the meaning set forth in Section 4.6.

1.1.85 "NET REFINANCING PROCEEDS" shall have the meaning set forth in Subsection 4.8.5.

1.1.86 "NET TRANSFER PROCEEDS" shall have the applicable meaning set forth in Subsection 4.8.1 or 4.8.2.

1.1.87 "NOTICE OF COMPLETION" shall have the meaning set forth in Subsection 5.7.7.

1.1.88 "OPTION" shall have the meaning set forth in the third paragraph of the Recitals to this Lease.

1.1.89 "OPTION AGREEMENT" shall have the meaning set forth in the third paragraph of the Recitals to this Lease.

1.1.90 "OPTION FEE" shall have the meaning set forth in Subsection 4.8.1.1.

1.1.91 "ORIGINAL LESSEE" shall have the meaning set forth in the first paragraph of the Recitals to this Lease.

1.1.92 "PARTIAL TAKING" shall have the meaning set forth in Section 6.5.

1.1.93 "PAYMENT BOND" shall have the meaning set forth in Subsection 5.4.3.2.

1.1.94 "PERCENTAGE RENT" shall have the meaning set forth in Subsection 4.2.2.

1.1.95 "PERFORMANCE BOND" shall have the meaning set forth in Subsection 5.4.3.1.

1.1.96 "PERMITTED CAPITAL EXPENDITURES" shall have the meaning set forth in Section 5.13.

1.1.97 "PERMITTED USES" shall have the meaning set forth in Section 3.1.



1.1.98 "PORTION SUBJECT TO DEMOLITION" shall have the meaning set forth in Subsection 2.3.2.

1.1.99 "POST TERM REMOVAL PERIOD" shall have the meaning set forth in Subsection 2.3.2.

1.1.100 "PREMISES" shall have the meaning set forth in the first paragraph of the Recitals to this Lease.

1.1.101 "PRIMARY COVERAGE" shall have the meaning set forth in Subsection 9.1.1.

1.1.102 "PRIME RATE" shall mean the prime or reference rate announced from time to time by Bank of America, N.A. or its successor, or if Bank of America, N.A. and its successor cease to exist then the prime or reference rate announced from time to time by the largest state chartered bank in California in term of deposits.

1.1.103 "PROMENADE" shall have the meaning set forth in Section 15.20 and in the Renovation Plan.

1.1.104 "PROPOSED TRANSFER" shall have the meaning set forth in Subsection 11.2.4.

1.1.105 "PUBLIC WORKS DIRECTOR" shall mean the Director of the Department of Public Works of the County of Los Angeles.

1.1.106 "PURCHASE MONEY NOTE" shall have the meaning set forth in Subsection 4.7.2.

1.1.107 "REDEVELOPMENT WORK" shall have the meaning set forth in Section 5.1.

1.1.108 "REDUCTION REQUIREMENT" shall have the meaning set forth in Section 7.1.

1.1.109 "RENEGOTIATION DATES" shall have the meaning set forth in Section 4.4.

1.1.110 "RENOVATION PLAN" shall have the meaning set forth in Section 5.1.

1.1.111 "REPLY" shall have the meaning set forth in Section 16.5.

1.1.112 "REQUEST FOR ARBITRATION" shall have the meaning set forth in Section 16(a).

1.1.113 "REQUESTING PARTY" shall have the meaning set forth in Section 16(a).

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1.1.114 "REQUIRED ANCHORAGE IMPROVEMENTS COMPLETION DATE" shall have the meaning set forth in Section 5.1.

1.1.115 "REQUIRED COMPLETION DATE" shall have the meaning set forth in Section 5.1.

1.1.116 "REQUIRED CONSTRUCTION COMMENCEMENT DATE" shall have the meaning set forth in Section 5.1.

1.1.117 "REQUIRED COST AMOUNT" shall have the meaning set forth in Section 5.1.

1.1.118 "RESPONSE" shall have the meaning set forth in Section 16(a).

1.1.119 "RESPONDING PARTY" shall have the meaning set forth in Section 16(a).

1.1.120 "REVERSION AMENDMENT" shall have the meaning set forth in Section 5.1.

1.1.121 "SECURITY DEPOSIT" shall have the meaning set forth in Section 7.1.

1.1.122 "SEPARATE DISPUTE" shall have the meaning set forth in Subsection 16.10.1.

1.1.123 "STATE" shall mean the State of California.

1.1.124 "STATEMENT OF POSITION" shall have the meaning set forth in Subsection 16.5(2)(a).

1.1.125 "SUBLEASE" shall have the meaning set forth in Subsection 11.1.1.

1.1.126 "SUBLESSEE" shall have the meaning set forth in Subsection 11.1.1.

1.1.127 "SUBSEQUENT RENOVATION" shall have the meaning set forth in Section 5.11.

1.1.128 "SUBSEQUENT RENOVATION FUND" shall have the meaning set forth in Section 5.12.

1.1.129 "SUBSEQUENT RENOVATION PLAN" shall have the meaning set forth in Section 5.11.

1.1.130 "TAKE OUT FOOD OPERATION" shall have the meaning set forth in Subsection 4.2.2 (j).

1.1.131 "TERM" shall have the meaning set forth in Section 2.1.

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1.1.132 "TIME OF THE ESSENCE" shall have the meaning set forth in Section 15.2.

1.1.133 "UMBRELLA COVERAGE" shall have the meaning set forth in Subsection 9.1.1.

1.1.134 "UNINSURED LOSS" shall have the meaning set forth in Section 10.5.

1.1.135 "WRITTEN APPRAISAL EVIDENCE" shall have the meaning set forth in Section 16.7.

1.2 Lease. For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, County hereby leases to Lessee, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as tenant, the Premises for the Term (as hereinafter defined) and upon the terms and conditions and subject to the requirements set forth herein. This Lease fully amends, restates, replaces and supersedes the Existing Lease.

1.2.1 As-Is. Lessee acknowledges that (1) it is currently in possession of the Premises, (2) Lessee or its predecessors-in-interest have continuously occupied and/or managed and operated the Premises since 1961, and (3) the Improvements now existing on the Premises were constructed by Lessee or its predecessors with contractors selected by them. Except as provided in Subsection 1.2.2, Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party as of the Effective Date, and Lessee hereby represents that it has performed all investigations that it deems necessary or appropriate with respect to the condition of the Premises or Improvements. Lessee hereby accepts the Premises on an "AS-IS, WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied, from County or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Premises or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises or any Improvements located thereon, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, heating, ventilating and air conditioning, plumbing, sewage and utility systems, facilities and appliances, and the square footage of the land or Improvements, (ii) the quality, nature, adequacy and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises and the Improvements located thereon, (iv) the development potential of the Premises, and the use, habitability, merchantability or fitness, or the suitability, value or adequacy, of the Premises or any Improvements located thereon for any particular purpose, (v) the zoning, entitlements or other legal status of the Premises or Improvements, and any public or private restrictions affecting use or occupancy of the Premises or Improvements, (vi) the compliance of the Premises or Improvements with any applicable codes, rules, regulations, statutes, resolutions, ordinances, covenants, conditions and restrictions or laws of the County, State, United States of America,



California Coastal Commission or any other local, state or federal governmental or quasi-governmental entity ("**Applicable Laws**"), including, without limitation, relevant provisions of the Americans with Disabilities Act ("**ADA**"), (vii) the presence of any underground storage tank or Hazardous Substances on, in, under or about the Premises, Improvements, the adjoining or neighboring property, or ground or other subsurface waters, (viii) the quality of any labor and materials used in any Improvements, (ix) the condition of title to the Premises or Improvements, and (x) the economics of the operation of the Premises or Improvements.

1.2.2 Title. County represents that County owns fee title to the Premises and that County has authority to enter into this Lease. Lessee hereby acknowledges the title of County and/or any other public entity or agency having jurisdiction thereover, in and to the Premises, and covenants and agrees never to contest or challenge the extent of said title, except as is necessary to ensure and enforce Lessee's rights under this Lease, as amended from time to time.

2. TERM; OWNERSHIP OF IMPROVEMENTS.

2.1 Term. The term of the Lease ("**Term**") commenced on June 8, 1961 and, unless terminated sooner in accordance with the provisions of this Lease, shall expire at 11:59 p.m. on June 7, 2051. For purposes of this Lease, "**Lease Year**" shall mean each calendar year (or partial calendar) during the Term of this Lease.

2.2 Ownership of Improvements During Term. Until the expiration of the Term or sooner termination of this Lease, and except as specifically provided herein, Lessee shall own all Improvements now existing and constructed by Lessee or its predecessors on the Premises, or hereafter constructed by Lessee upon the Premises, and all alterations, additions or modifications made thereto by Lessee.

2.3 Reversion of Improvements. Upon the expiration of the Term or sooner termination of this Lease, whether by cancellation, forfeiture or otherwise:

2.3.1 County's Election to Receive Improvements. Unless Lessee is expressly directed by County in writing in accordance with this Section 2.3 to demolish and remove Improvements upon the expiration or earlier termination of the Term, all Improvements located on, in, or under the Premises (including all fixtures or equipment affixed thereto) shall remain upon and be surrendered with the Premises as part thereof, and title to such Improvements shall vest in County without any compensation to Lessee. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the Term or termination of this Lease, to (a) receive any and all proceeds which are attributable to the Condemnation of Improvements belonging to Lessee immediately prior to the taking of possession by the Condemnor, to the extent provided in Article 6 of this Lease, or (b) remove any furniture or equipment that is neither permanently affixed to, or reasonably necessary for the operation of, the Premises, any signage identifying Lessee (as opposed to other signage used in the operation of the Premises and Improvements), or any personal property, upon the expiration of the Term or earlier termination of this Lease or at any time during the Term,



subject to Lessee's obligations under this Lease to use the Premises for the Permitted Uses.

2.3.2 Duty to Remove. No earlier than eleven (11) years, and no later than ten (10) years prior to the expiration of the Term, Lessee shall deliver to County a report prepared by a construction and demolition expert reasonably approved by County that details and estimates the cost and required time period for the removal of all Improvements on the Premises at the expiration of the Term (the "**Demolition and Removal Report**").

County may elect to require Lessee at the end of the Term or any earlier termination of this Lease to remove, at the sole cost and expense of Lessee, all or any portion of the Improvements located on, in or under the Premises, whether placed or maintained thereon by Lessee or others, including, but not limited to, concrete foundations, pilings, structures and buildings; provided, however, such portion ("Portion Subject to Demolition") of the Improvements designated by County for demolition must be reasonably subject to being demolished separately from other portions of the then-existing Improvements which County has designated to remain. Lessee shall complete the required demolition and removal and shall restore and surrender to County possession of the Premises in good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps.

In the case of the termination of the Lease at the scheduled expiration date of the Term, any election by County to require Lessee to demolish and remove the Improvements or a Portion Subject to Demolition must be made by County in writing to Lessee not later than five (5) years prior to the then-scheduled expiration date of the Term. If County elects to require Lessee to demolish and remove all of the Improvements or a Portion Subject to Demolition, Lessee shall complete such demolition and removal and otherwise comply with Lessee's surrender obligations under this Section 2.3 on or before the expiration of the Term of the Lease. In the case of the termination of the Lease at the scheduled expiration date of the Term, Lessee shall have the right, by written notice to County not later than thirty (30) days prior to the scheduled expiration date of the Term, to extend the date by which Lessee must complete the Improvement removal and Premises surrender obligations under this Subsection 2.3.2 and/or the Lessee's removal obligations under Subsection 2.3.4 below to a date not more than one hundred twenty (120) days after the expiration of the Term (the "Post Term Removal Period"); provided, however, that all of the Lessee's obligations and liabilities under the Lease (other than the obligation to affirmatively operate the Premises) shall be applicable during the Post Term Removal Period, including without limitation, the Lessee's obligations with respect to insurance and indemnification, and Lessee's obligation to pay County compensation for the Post Term Removal Period in an amount equal to the Monthly Minimum Rent rate in effect immediately prior to the expiration of the Term.

In the case of a termination of the Lease prior to the scheduled expiration date of the Term, any election by County to require Lessee to remove the Improvements or a Portion Subject to Termination must be made by County in writing to Lessee not later than sixty (60) days after the effective date of such termination, and if County elects to

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require Lessee to demolish and remove all or a portion of the Improvements on a termination of the Lease prior to the scheduled expiration of the Term, Lessee shall complete such demolition and removal and otherwise comply with Lessee's surrender obligations under this Section 2.3 on or before the later of (a) ninety (90) days after the date on which this Lease terminated, or (b) if Lessee has submitted a Demolition and Removal Report to County, that period after the date on which this Lease terminated equal to the estimated demolition and removal period set forth in the Demolition and Removal Report.

Upon receipt of County's written notice of election to require Lessee to remove all of the Improvements or a Portion Subject to Demolition, Lessee shall, within ninety (90) days after the date of such County notice, provide County with a letter of credit, bond, guaranty, deposit of funds or other security, in form, from such issuer and in such amount, as reasonably satisfactory to Director ("Demolition Security"), to secure the performance of Lessee's removal and restoration obligations pursuant to this Subsection 2.3.2. The amount of any Demolition Security shall be equal to the estimated costs to remove the Improvements as set forth in the Demolition and Removal Report (the "Estimated Costs"), adjusted to reflect the percentage change in the ENR Index from the date on which the Estimated Cost was determined until the date on which Lessee delivers the Demolition Security. Thereafter, Lessee shall increase the amount of the Demolition Security on an annual basis (on or before each successive anniversary of the required date for Lessee's original delivery to County of the Demolition Security) by the same percentage as the percentage increase (if any) in the ENR Index over the preceding year. County shall have the right to revoke County's election to require the removal of all Improvements or a Portion Subject to Demolition at the end of the scheduled expiration of the Term of the Lease by written notice to Lessee of such revocation at any time not later than ninety (90) days prior to the scheduled expiration date of the Lease. If County revokes its prior demolition and removal notice, then any Demolition Security previously delivered by Lessee to County pursuant to this paragraph shall be returned to Lessee within thirty (30) days following the date of such revocation. Upon completion of all of Lessee's obligations under this Section 2.3, the remaining balance of any Demolition Security held by County (and not used by County pursuant to Subsection 2.3.3 or 2.3.4 below) shall be returned to Lessee.

If County fails to elect to require Lessee to remove all of the Improvements on the Premises in accordance with the terms of this Section 2.3 (or revokes such election as provided above), then upon the expiration of the Term, or earlier termination of the Lease, Lessee shall surrender possession to County of the Premises and those Improvements not required to be removed by Lessee, in the condition in which such Improvements are required to be repaired and maintained under this Lease.

2.3.3 County's Right to Remove Improvements. If County elects to have Lessee demolish and remove Improvements and Lessee fails to do so in accordance with this Lease, County may, at its election, retain, sell, remove or demolish such Improvements. In the event of any demolition or removal by County of Improvements required to have been demolished and removed by Lessee, Lessee shall reimburse County for any Actual Costs incurred by County in connection with such demolition and removal

in excess of any funds used by County from the Demolition Security for such purpose and any consideration received by County as a result of any sale of the demolished Improvements; provided, however, that County shall be under no obligation to Lessee to effectuate any such sale or, in the case of a sale, to obtain any required level of compensation therefor.

2.3.4 Duty to Remove Personal Property. No later than the expiration of the Term or sooner termination of this Lease (subject to Lessee's rights with respect to the Post Term Removal Period described in Subsection 2.3.2 above), Lessee shall in all events remove, at its cost and expense, all furniture, equipment and other personal property that is not affixed to the Improvements or reasonably necessary for the orderly operation of the Premises or Improvements. Should Lessee fail to remove such furniture, equipment and other personal property within said period, and said failure continues for ten (10) days after written notice from County to Lessee, Lessee shall lose all right, title and interest therein, and County may elect to keep the same upon the Premises or to sell, remove, or demolish the same, in which event Lessee shall reimburse County for its Actual Costs incurred in connection with any such sale, removal or demolition in excess of any consideration received by County as a result thereof.

2.3.5 Title to Certain Improvements Passes to County; Lessee to Maintain. As between County and Lessee, title to all utility lines, transformer vaults and all other utility facilities constructed or installed by Lessee upon the Premises shall vest in County upon construction or installation to the extent that they are not owned by a utility. Notwithstanding the foregoing sentence, such utility lines, transformer vaults and all other utility facilities, shall be maintained, repaired, and replaced, if and as needed, by Lessee during the Term.

3. USE OF PREMISES.

3.1 Specific Primary Use. The Premises and Improvements shall be used by Lessee for the operation and management of (i) a residential apartment project, (ii) boat anchorage facilities, and (iii) such other related and incidental uses as are specifically approved by County (collectively, the "**Permitted Uses**"). Except as specifically provided herein, the Premises and Improvements shall not be used for any purpose other than the Permitted Uses, without the prior written consent of County. County makes no representation or warranty regarding the continued legality of the Permitted Uses or any of them, and Lessee bears all risk of an adverse change in Applicable Laws.

3.2 Prohibited Uses. Notwithstanding the foregoing:

3.2.1 Nuisance. Lessee shall not conduct or permit to be conducted any private or public nuisance on or about the Premises or the Improvements, nor commit any waste thereon. No rubbish, trash, waste, residue, brush, weeds or undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon any portion of the Premises, except for trash collected in appropriate receptacles intended for such purposes, nor shall any portion of the Premises or Improvements be permitted to be



operated or maintained in a manner that renders the Premises or Improvements a fire hazard.

3.2.2 Restrictions and Prohibited Uses. Without expanding upon or enlarging the Permitted Uses of the Premises and Improvements as set forth in this Lease, the following uses of the Premises and Improvements are expressly prohibited:

3.2.2.1 The Premises and Improvements shall not be used or developed in any way which violates any Applicable Law.

3.2.2.2 The Premises and Improvements shall not be used or developed in any way in a manner inconsistent with the Permitted Uses. Without limiting the foregoing, no part of the Premises shall be used by any person for any adult entertainment purposes, as such term refers to graphic, explicit and/or obscene depictions of sexual activity; provided, however, that this Subsection 3.2.2.2 shall not be interpreted to regulate in violation of Applicable Law the private activity of an individual that is confined to such individual's private residence;

3.2.2.3 All Improvements shall at all times be kept in good condition and repair consistent with the requirements of Section 10.1 of this Lease, except as such condition is affected by the performance of the Redevelopment Work or Alterations in accordance with the requirements of Article 5 of this Lease.

3.2.2.4 No condition shall be permitted to exist upon the Premises or Improvements which induces, breeds or harbors infectious plant diseases, rodents or noxious insects, and Lessee shall take such measures as are appropriate to prevent any conditions from existing on the Premises or Improvements which create a danger to the health or safety of any persons occupying, using, working at, or patronizing the Premises or Improvements.

3.2.2.5 Without the prior written reasonable approval of Director, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation (collectively, "antennae") shall be erected, used or maintained by Lessee outdoors above ground on any portion of the Premises, whether attached to an improvement or otherwise; provided that the foregoing requirement to obtain Director's approval as to any antennae shall be inapplicable to the extent that such requirement violates Applicable Law; and provided, further, that Lessee shall not be required to obtain Director's approval of any antennae that exists on the Premises prior to the Effective Date to the extent that prior to the Effective Date Lessee and Department engaged in a site inspection of such existing antennae and Department did not disapprove such existing antennae as being unsightly or creating a risk of injury or damage to person or property.

3.2.2.6 No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or



placed upon or adjacent to the Premises, except as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease.

3.2.2.7 No adverse environmental condition in violation of Applicable Laws shall be permitted to exist on or in any portion of the Premises or the Improvements, nor shall any Hazardous Substances be permitted to be generated, treated, stored, released, disposed of, or otherwise deposited in or on, or allowed to emanate from, the Premises, the Improvements or any portion thereof, including, without limitation, into subsurface waters; provided, however, that Hazardous Substances may be stored or used on the Premises or in the Improvements, so long as such storage and use is of a type and quantity, and conducted in a manner (a) in the ordinary course of business of an otherwise Permitted Use, (b) in accordance with standard industry practices for such Permitted Use, and (c) in compliance with all Applicable Laws. In addition, Lessee shall not be required to remove Hazardous Substances existing in the building materials of the existing Improvements as of the Effective Date if and to the extent that such Hazardous Substances in their condition in such Improvements as of the Effective Date do not require remediation or removal under Applicable Laws in effect as of the Effective Date; provided, however, that (i) such Hazardous Substances shall be removed or remediated if and to the extent required under any Applicable Laws hereafter applicable to the Premises and/or the Improvements located thereon, (ii) such Hazardous Substances shall be removed or remediated if and to the extent required under the Renovation Plan or the Final Plans and Specifications for the Redevelopment Work, or if required under Applicable Laws that apply to the performance of the Redevelopment Work, and (iii) any removal or remediation of such Hazardous Substances, including without limitation, any disposal thereof, shall be performed in compliance with all Applicable Laws.

This Subsection 3.2.2.7 shall not impose liability upon Lessee to County for any Hazardous Substances that might be present in seawater passing over, under, through or around any portion of the Premises or any Improvement as long as (I) such Hazardous Substances did not originate at or from the Premises or Improvements, and (II) with respect to Hazardous Substances that did not originate at or from the Premises or Improvements, were not caused by the acts or omissions of Lessee or its Sublessees, or its or their respective contractors, employees, agents, representatives, consultants, customers, visitors, permittees or licensees.

3.2.2.8 The following uses shall not be permitted: (a) fuel sales; (b) boat or vehicle repair, other than minor servicing or owner maintenance; (c) live bait sales; (d) commercial sport fishing and tour boats; and (e) trailer boat launching or storage; provided, however, that facilities for handling and storing dinghies, small skiffs and similar craft may be permitted upon prior approval in writing from Director, which approval shall not be unreasonably withheld, conditioned or delayed.

3.3 Active Public Use. The parties acknowledge that County's objective in entering into this Lease is the complete and continuous use of the facilities and amenities located in Marina del Rey by and for the benefit of the public, without discrimination as to race, gender or religion, and for the generation and realization by County of revenue therefrom. Accordingly, Lessee



agrees and covenants that it will operate the Premises and Improvements fully and continuously in light of these objectives, consistent with the operation of comparable residential apartment and anchorage facilities, and that it will use commercially reasonable efforts so that County may obtain maximum revenue therefrom as contemplated by this Lease. In the event of any dispute or controversy relating hereto, this Lease shall be construed with due regard to the aforementioned objectives.

3.4 Days of Operation. Beginning on the date on which all phases of the initial construction of the Anchorage Improvements have been substantially completed, the Promenade (as defined in Section 15.20) shall be open every day of the year, except for any closure approved by Director required to perform (a) any Alteration permitted under this Lease, or (b) maintenance, repair, replacement or restoration work permitted or required under this Lease. Lessee shall maintain a dockmaster on duty with respect to the Anchorage Improvements pursuant to the terms and provisions of Section 15.21 of this Lease, on a schedule approved by County, which approval shall not be unreasonably withheld, conditioned or delayed. Any changes in the days or hours of operation of the Promenade or the dockmaster shall be subject to the written approval of Director, which approval shall not be unreasonably withheld, conditioned or delayed.

3.5 Signs and Awnings. Any and all art, displays, identifications, monuments, awnings, advertising signs and banners which are placed on, or are visible from, the exterior of the Premises or Improvements shall be only of such size, design, wording of signs and color as shall have been specifically submitted to and approved by Director (and to the extent required under then Applicable Law, the Design Control Board), in writing, whether pursuant to Article 5 of this Lease or otherwise, prior to the erection or installation of said art, sign, display, identification, monument, awning or advertising sign. Director shall not unreasonably withhold its approval of the matters described in this Section 3.5.

3.6 Compliance with Regulations. Lessee shall comply with all Applicable Laws and shall pay for and maintain any and all required licenses and permits related to or affecting the use, operation, maintenance, repair or improvement of the Premises or Improvements. Without limitation of the foregoing, Lessee shall comply with (i) all conditions and requirements of Coastal Development Permit No(s). _____ **[PRIOR TO LEASE EXECUTION INSERT ANY COASTAL DEVELOPMENT PERMIT NO(S). ISSUED FOR REDEVELOPMENT WORK]**, which conditions and requirements are attached to this Lease as Exhibit D and incorporated herein by this reference, and (ii) all public access requirements of the Marina del Rey Local Coastal Program, as amended.

3.7 Rules and Regulations. Lessee agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Premises and Improvements as may be promulgated by County from time to time for general applicability on a non-discriminatory basis to other residential apartment and anchorage facilities in Marina del Rey, and delivered in writing to Lessee.

3.8 Reservations. Lessee and County expressly agree that this Lease and all of Lessee's rights hereunder shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way existing as of the date or otherwise referenced in this Lease in, to, over or affecting the Premises for any purpose whatsoever, and also subject to any other



encumbrances, reservations, licenses, easements and rights of way consented to by Lessee in writing.

Without limiting the foregoing, Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all prior matters of record or other matters disclosed to or known to Lessee, as of the Effective Date, which provide a right to install, construct, maintain, service and operate sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Premises, together with the right of County to convey such easements and transfer such rights to others.

3.9 Tahiti Way. The County, in its governmental capacity and in its capacity as owner of Tahiti Way, a private and physically open street, agrees that Lessee, together with its Sublessees, assignees, contractors, employees, agents, permittees, and invitees shall have full access to and from Tahiti Way, which provides access to and from Villa Marina, a publicly dedicated and physically open street, during the entire Term of the Lease, subject to any and all rights of County regarding any repair, reconstruction, diversion and replacement of said roadway which it might lawfully undertake consistent with its obligation to Lessee under this Lease and Applicable Laws.

4. PAYMENTS TO COUNTY.

4.1 Net Lease. The parties acknowledge that the rent to be paid by Lessee under this Lease is intended to be absolutely net to County. The rent and other sums to be paid to County hereunder are not subject to any credit, demand, set-off or other withholding. Except as specifically set forth herein, Lessee shall be solely responsible for all capital costs (including, without limitation, all structural and roof repairs or replacements) and operating expenses attributable to the operation and maintenance of the Premises and Improvements, including without limitation the parking areas included within the Premises.

4.1.1 Utilities. In addition to the rental charges as herein provided, Lessee shall pay or cause to be paid all utility and service charges for furnishing water, power, sewage disposal, light, telephone service, garbage and trash collection and all other utilities and services, to the Premises and Improvements.

4.1.2 Taxes and Assessments. Lessee agrees to pay before delinquency all lawful taxes, assessments, fees, or charges which at any time may be levied by the State, County, City or any tax or assessment levying body upon any interest in this Lease or any possessory right which Lessee may have in or to the Premises or the Improvements thereon for any reason, as well as all taxes, assessments, fees, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by it in, on or about the Premises. Lessee's obligation to pay taxes and assessments hereunder shall include but is not limited to the obligation to pay any taxes and/or assessments, or increases in taxes and/or assessments arising as a result of the grant to Lessee of the Option or Lessee's exercise thereof. Lessee shall have the right to contest the amount of any assessment imposed against the Premises or the possessory interest therein; provided,



however, the entire expense of any such contest (including interest and penalties which may accrue in respect of such taxes) shall be the responsibility of Lessee.

The parties acknowledge that the Premises are and shall continue to be subject to possessory interest taxes, and that such taxes shall be paid by Lessee. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code. Lessee shall include a statement in all Subleases to the effect that the interests created therein are derived from the Lessee's interest under this Lease and that Lessee's interest requires the payment of a possessory interest tax.

4.2 Rental Payments. Throughout the Term, for the possession and use of the Premises granted herein, Lessee shall pay County (a) the Annual Minimum Rent described in subsection 4.2.1 below, and (b) the Percentage Rent described in subsection 4.2.2 below. For purposes of this Lease "**Annual Rent**" shall mean the aggregate of the Annual Minimum Rent and Percentage Rent.

4.2.1 Annual Minimum Rent and Monthly Minimum Rent. Lessee shall pay to County the minimum rent described in this Subsection 4.2.1 (subject to adjustment pursuant to Sections 4.3 and 4.4 below) during each Lease Year during the Term (the "Annual Minimum Rent"). Annual Minimum Rent shall be payable by Lessee to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent (the "**Monthly Minimum Rent**"); provided, however, if any Lease Year is shorter than a calendar year, then the Annual Minimum Rent shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to 365, and Monthly Minimum Rent shall be payable in equal monthly installments of such pro rata Annual Minimum Rent.

During the period from the Effective Date through the earlier of the Completion Date or the Required Completion Date (as defined in Section 5.1), the Annual Minimum Rent shall be equal to the annual square foot rental required to be paid under Section 12 of the Existing Lease as of the date immediately prior to the Effective Date.

Commencing upon the earlier of the Completion Date or the Required Completion Date, and continuing for the three (3) year period thereafter, the Annual Minimum Rent shall be equal to the greater of (a) the Annual Minimum Rent in effect during the period described in the immediately preceding paragraph, or (b) seventy-five percent (75%) of the average Annual Rent projected to be payable by Lessee during the period described in this paragraph. Not later than ninety (90) days prior to the earlier of the projected Completion Date or the Required Completion Date, Lessee shall deliver to County for County's reasonable approval Lessee's projected Gross Receipts for the three (3) year period following the Completion Date, which projected Gross Receipts, as reasonably approved by County, shall be used to calculate the average total Annual Rent projected to be payable by Lessee for such three (3) year period.

Commencing on the day after the third (3rd) anniversary of the earlier of the Completion Date or the Required Completion Date (the "**First Adjustment Date**"), and continuing



every three (3) years thereafter, the Annual Minimum Rent shall be as set forth in Sections 4.3 and 4.4 below.

4.2.2 Percentage Rent. For the purposes of this Lease, "**Percentage Rent**" for any given month or year shall be defined as the sum of the amounts set forth in this Subsection 4.2.2, less the Annual Minimum Rent for such month or year. Gross Receipts (as defined herein) from each transaction, sale or activity of Lessee (or any Sublessee) on, from or within the Premises or Improvements shall be reported under one or more of the percentage categories set forth below, as applicable. It is understood that Article 3 of this Lease provides for the Permitted Uses of the Premises and that the percentage categories listed below are not all applicable to this Lease and are in no way intended to expand or modify the Permitted Uses. Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel, has interpreted and may further interpret the percentage categories as set forth in this Subsection 4.2.2, with such determinations and interpretations to be a guideline in determining the appropriate categories. Within fifteen (15) days after the close of each and every calendar month of the Term, Lessee shall file a report of Gross Receipts and pay to County a sum equal to the total of the following percentages of Gross Receipts for such previous month, less the amount of the installment of Monthly Minimum Rent paid for such previous month.

(a) TWENTY FIVE PERCENT (25%) of Gross Receipts or other fees for the rental or use of boat slips, anchorages, moorings, dockside storage space, and other water-side facilities and services ancillary thereto as are generally provided in common to tenants thereof, including receipts obtained from persons who live on their boats; notwithstanding the foregoing, during the twenty (20) year period following the earlier of the Completion Date or the Required Completion Date (the "Credit Period"), Lessee shall be entitled to a rent credit under this category (a) in the form of a reduction equal to 1.7% in the percentage applicable under this category (c), as follows: (1) during that portion of the Credit Period that occurs prior to the first Renegotiation Date, the percentage applicable under this category (a) shall be reduced from 25% to 23.3%; and (2) during that portion of the Credit Period that occurs after the first Renegotiation Date, the percentage applicable under this category (a) shall be equal to the Fair Market Rental Value percentage established under Section 4.4 below minus 1.7%, but not less than a resulting percentage (after application of the credit) of 23.3%;

(b) TWENTY PERCENT (20%) of Gross Receipts from the rental or other fees charged for the use of dry storage facilities, landside storage space, boats, motors, tackle, recreational equipment, tools, equipment, launch and retrieval of small boats and from the sale of live bait;

(c) FOURTEEN AND ONE-HALF PERCENT (14.5%) of Gross Receipts or other fees charged for (1) the occupancy of apartments, (2) the rental or use of meeting rooms, or (3) the rental or use of land and/or water or facilities for activities not otherwise provided for in this section, such as but not limited to television, motion pictures or other media filming purposes; notwithstanding the foregoing, (i) during the period from the Effective Date through the earlier of the Completion Date or the Required Completion Date, the percentage set forth in this category (c) shall be TEN AND ONE-HALF



PERCENT (10.5%) instead of FOURTEEN AND ONE-HALF PERCENT (14.5%); and (ii) during the twenty (20) year period following the earlier of the Completion Date or the Required Completion Date, Lessee shall be entitled to a 1.8% reduction in the percentage otherwise applicable under this category (c) such that during such twenty (20) year period the percentage applicable under this category (c) shall be 12.7%;

(c1) TWELVE PERCENT (12%) of Gross Receipts or other fees charged for the occupancy of (1) offices utilized for banking, financial or investment activities, internal clerical or administrative activities (other than Lessee's management office), business enterprises, real estate and insurance brokerage, legal, medical, engineering, travel agencies, yacht club purposes, or similar uses; or (2) restaurants, stores, shops, or other commercial establishments; provided that, except as provided in subsection 4.2.2.5, Gross Receipts or other fees charged for the occupancy of restaurants, stores, shops or other commercial establishments shall not be included in the calculation of Percentage Rent under this subsection (c1) if the Gross Receipts from the operation of such businesses (as opposed to the rentals paid for the occupancy of the space) are required to be reported under another percentage rent category;

(d) Intentionally omitted;

(e) FIVE PERCENT (5%) of commissions or other fees earned from boat brokerage, car rental agencies, marine insurance commissions where the sale of insurance is conducted in conjunction with boat sales and/or boat brokerage, laundry and dry cleaning commissions and other similar activities where earnings are normally on a commission basis;

(f) With respect to service enterprises, including, without limitation, cable television, internet, satellite, telecommunication or other antennae fees, telephone and other utility services, and valet parking services, FIVE PERCENT (5%) of the Gross Receipts received by Lessee (or a subtenant) from such enterprise if Lessee (or such subtenant) is the operator of such enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee (or a subtenant) from such enterprise if a third party provider is the operator of such enterprise;

(g) SIX PERCENT (6%) of the Gross Receipts received by Lessee (or a subtenant) if Lessee (or a subtenant) is the operator of the enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee (or a subtenant) if a third party provider is the operator of the enterprise, from commercial boating activities including, but not limited to, charter boat, bareboat charters and sport fishing boats;

(h) With respect to the installation or operation of coin-operated vending or service machines, including pay telephones, FIVE PERCENT (5%) of the Gross Receipts received by Lessee (or a subtenant) from such enterprise if Lessee (or a subtenant) is the operator of such enterprise, or TWENTY-FIVE PERCENT (25%) of any commissions or fees collected by Lessee (or a subtenant) from such enterprise if a third party provider is the operator of such enterprise;



(i) TEN PERCENT (10%) of Gross Receipts from the operation of a bar, tavern, cocktail lounge, discotheque, night club or other facilities engaged primarily in the on-premises sale of alcoholic beverages, except as provided for in category (j);

(j) THREE AND ONE-HALF PERCENT (3½%) of Gross Receipts from the operation of a restaurant, restaurant/cocktail lounge combination, coffee shop, beach or theater food facility, except that Gross Receipts from facilities established and operated as a take-out food operation shall be reported under category; a "take-out food operation" shall mean a restaurant or other food operation a majority of the Gross Receipts from which are derived from the sale of food or beverages to be consumed off-site;

(k) Intentionally omitted;

(l) Intentionally omitted;

(m) FIFTEEN PERCENT (15%) of Gross Receipts from club dues, initiation fees and assessments, except that separate assessments for capital improvements may be exempted; provided that to qualify for such an exemption Lessee must comply with the "Criteria for Eligibility for Exemption of Special Assessments from Gross Receipts" issued by Director;

(n) Intentionally omitted;

(o) Intentionally omitted;

(p) Intentionally omitted;

(q) FIVE PERCENT (5%) of Gross Receipts for cover charges or other fees charged for admission to facilities featuring entertainment, excluding movie theaters, whose Gross Receipts shall be reportable under category (s);

(r) TWENTY PERCENT (20%) of Gross Receipts from parking fees, except that (1) parking fees or charges, if any, which are collected in conjunction with an activity the Gross Receipts from which are required to be reported in a percentage category higher than twenty percent (20%) shall be included in Percentage Rent at such higher percentage; and (2) valet parking charges, fees and tips shall not be included in Percentage Rent under this category, but instead shall be included in Percentage Rent under category (f) above;

(s) FIVE PERCENT (5%) of Gross Receipts from the sale of miscellaneous goods and services, but not specifically provided for elsewhere in this Subsection 4.2.2; and

(s1) FIVE PERCENT (5%) of the Gross Receipts from the operation of all stores, shops or boutiques selling items at retail.

If with the prior approval of County or Director Lessee hereafter engages in a use that is not currently permitted under this Lease and as to which there is no specific



percentage set forth above applicable to such additional or related use, then concurrent with the approval by County or Director of such specific additional use, Director and Lessee shall negotiate in good faith with Lessee to establish the specific percentage to be applied to such use. Such percentage shall be the greater of (1) the average percentage received by County with respect to that category of activities within Marina del Rey, California at the time of approval of the additional or related use, and (2) the most recent agreement between County and a Marina del Rey lessee, whether by arbitration or otherwise, with respect to the appropriate percentage to be applied to that use. The percentage rent for the additional or related use as determined pursuant to this paragraph shall remain in effect until the next Renegotiation Date.

4.2.2.1 Payment of Percentage Rent. Within fifteen (15) days after the close of each and every calendar month of the Term hereof, Lessee shall file with County a report of Gross Receipts by category for such previous month, and the amount of Percentage Rent resulting therefrom. Lessee shall include with such report a payment to County of the amount by which the Percentage Rent for such previous month exceeds the Monthly Minimum Rent paid by Lessee for such previous month.

4.2.2.2 Accounting Records and Procedures. Lessee agrees to and shall comply with, and shall cause all of Sublessees to agree to and comply with, the recordkeeping and accounting procedures, as well as the inspection and audit rights granted to County, set forth in Article 14 of this Lease.

4.2.2.3 Gross Receipts. Except as herein otherwise provided, the term "Gross Receipts" as used in this Lease means the gross amount of all money, receipts, compensation, or other things of value, including but not limited to charges, sales price, rentals, payments, reimbursements (including, without limitation, common area maintenance or other expenses, taxes, utilities, insurance and other payments or reimbursements), fees and commissions made or earned by Lessee and/or all Sublessees, whether collected or accrued from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, on the Premises, including but not limited to rentals, the rendering or supplying of services and the sale of goods, wares, food, beverages or merchandise.

(1) Except as otherwise set forth herein, there shall be no deduction from Gross Receipts for any overhead or cost or expense of operation, such as, without limitation, salaries, wages, costs of goods, interest, debt amortization, rent credit, collection costs, discounts from credit card operations, insurance and taxes.

(2) Gross Receipts shall not include direct taxes imposed upon the consumer and collected therefrom by Lessee such as, without limitation, retail sales taxes, excise taxes, or related direct taxes paid periodically by Lessee to a governmental agency accompanied by a tax return statement.

(3) Gross Receipts shall not include security deposits paid by a Sublessee to Lessee to be held by Lessee as security for Sublessee's obligations under its Sublease, license or permit, except to the extent Lessee allocates or applies any



portion of such security deposit to unpaid rent or other amounts owed by such Sublessee to Lessee, in which event the sum so allocated or applied shall be included in Gross Receipts as of the date of such allocation or application.

(4) Gross Receipts must include the usual charges for any services, goods, rentals or facilities provided by Lessee or Sublessees. Bona fide bad debts actually accrued for amounts owed by customers or patrons may be deducted from Gross Receipts to the extent that such amounts have been previously reported as Gross Receipts; however, there shall be no deduction for bad debts based on past experience or transfer to a bad debt reserve. Subsequent collection of bad debts previously not reported as Gross Receipts shall be included in Gross Receipts at the time they are collected.

(5) In those instances where Gross Receipts are based on the sale of merchandise, food, beverages or services, Gross Receipts shall not include any of the following items:

a. goods returned to suppliers or which are delivered for resale (as opposed to delivery) to another retail location or to a warehouse or to any retailers without profit to Lessee, where such returns or deliveries are made solely for the convenient operation of the business of Lessee or Sublessee and not for the purpose of consummating a sale made in, about or from the Premises;

b. an amount equal to the cash refunded or credit allowed on merchandise returned by customers and accepted by Lessee, or the amount of cash refunded or credit allowed thereon in lieu of Lessee's acceptance thereof, but only to the extent that the sales relating to such merchandise were made in, about or from the Premises; provided that whenever Lessee accepts a credit slip as payment for goods or services, the amount of credit shall be included in Gross Receipts;

c. sales of fixtures, equipment or property which are not Lessee's stock in trade;

d. receipts from insurance claims other than rental interruption or business interruption insurance related to the replacement of Gross Receipts;

e. interest earned by Lessee on funds arising from the Premises or the use thereof, deposited or maintained by Lessee in banks or similar financial institutions;

f. tips and gratuities paid to employees;

g. goods or meals provided to employees of the business operation at cost or less, and complimentary meals offered for promotional purposes; provided, however, that the amounts excluded under this paragraph (g)



in connection with a particular business operation shall not exceed two percent (2%) of the Gross Receipts from such business operation in any year;

h. receipts from vending machines used solely by employees of the business operation;

i. fees or charges paid to credit card companies in connection with customer purchases made by use of a credit card; provided, however, that the amounts excluded under this paragraph (i) in connection with a particular business operation shall not exceed one percent (1%) of the Gross Receipts from such business operation in any year;

j. interest or other charges paid by customers of Sublessees for the extension of credit;

k. the sale of promotional merchandise by Sublessees at cost;
and

l. amounts received for services rendered by a Sublessee of an individual apartment unit (or by a live-aboard) in connection with the operation by such Sublessee (or live-aboard) of an in-home business in such apartment unit (or the boat of such live-aboard), as long as the primary purpose of Sublessee's use of the apartment unit (or boat) is for residential occupancy and such in-home business is an incident to such residential use.

(6) Gross Receipts shall not include payments received by Lessee from a Sublessee for the Cost of such Sublessee's submetered electricity, provided (A) each Sublessee's obligation to reimburse Lessee for such Sublessee's electrical charges is separate and apart from such Sublessee's obligation to pay rent for its occupancy of the Premises; (B) the reimbursed sum is in an amount equal to the Cost of the Sublessee's electricity; and (C) the amount received is actually credited against the cost of the Sublessee's electricity. For the purpose of this paragraph (6), the "Cost" of a Sublessee's electricity shall mean the actual out-of-pocket costs incurred by Lessee, exclusive of overhead and general and administrative expenses, in paying the portion of the respective utility's electric bill that is allocable to the Sublessee based on such Sublessee's submetered consumption of electricity, and in paying the portion of any third party submeter reading and service charge to each submeter that is actually read and a direct allocation of the submeter service charge to each such submeter that is serviced. County shall have the right to approve all submeters and to challenge the legitimacy or amount of any Cost, and all disputes regarding such County approvals or challenges, if not resolved by the parties within thirty (30) days after notice to Lessee of such disapproval or challenge, shall be resolved by arbitration pursuant to Article 16 of this Lease. The terms and provisions of this paragraph 6 shall also be applicable to other submetered utility charges to the extent that it is customary for Sublessees to be responsible for such other utility charges.



4.2.2.4 Excess Payments Credit. If payments of Monthly Minimum Rent and Percentage Rent actually made by Lessee in a particular Lease Year exceed the total Annual Minimum Rent and Percentage Rent that would have been due for such Lease Year if computed on an annual basis at the end of such Lease Year, Lessee shall be permitted to credit that excess amount ("**Excess Percentage Rent Payment**") against the succeeding monthly installments of Percentage Rent otherwise due under this Subsection 4.2.2 until such time as the entire Excess Percentage Rent Payment has been recouped. If Lessee makes an Excess Percentage Rent Payment in the final Lease Year of the Term, County shall refund such amount to Lessee within thirty (30) days after County's verification of such overpayment, which County agrees to use its reasonable efforts to diligently complete after receipt by County of all information required for County to calculate the Excess Percentage Rent Payment and to resolve of any audits of Percentage Rent.

4.2.2.5 Effect of Sublessee Doing Business. Except as specifically provided to the contrary in this Lease, where a Sublessee is conducting a business or engaged in any use or occupation or any combination thereof on Lessee's leasehold except for a business conducted under Item (1) of category (c1) of Subsection 4.2.2, for purposes of determining Percentage Rent Lessee shall report whichever of the following results in the greater Percentage Rent: (i) the Gross Receipts received by each Sublessee under one or more of categories (a) through (s1) of Subsection 4.2.2; or (ii) the Gross Receipts received by Lessee from such Sublessee under category (c) or (c1) of Subsection 4.2.2.

4.2.2.6 Interest, Service Fees or Late Charges. Interest, service fees or late charges collected in conjunction with a transaction, sale or activity of Lessee or Sublessee shall be reported in the same percentage category as the transaction, sale or activity is reported.

4.2.2.7 Percentage Rent Does Not Affect Permitted Uses. It is understood and acknowledged by Lessee that Section 3.1 of this Lease sets forth the Permitted Uses of the Premises by Lessee; thus, the Percentage Rent categories listed in Subsection 4.2.2 are not all necessarily applicable to this Lease and are in no way intended to expand the Permitted Uses.

4.2.2.8 Policy Statements. Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel may further interpret the definition of Gross Receipts, with such interpretations to be a guideline in implementing the foregoing Subsections of this Lease.

4.3 Adjustments to Annual Minimum Rent. As of the First Adjustment Date and every three (3) years thereafter until the first Renegotiation Date, and thereafter each third (3rd), sixth (6th) and ninth (9th) anniversary of each Renegotiation Date (each an "**Adjustment Date**" and collectively the "**Adjustment Dates**"), the Annual Minimum Rent shall be adjusted as provided in this Subsection 4.3. The Annual Minimum Rent shall be adjusted as of each Adjustment Date to the amount which equals seventy five percent (75%) of the average of the total Annual Rent payable by Lessee to County each year under Section 4.2 of this Lease during the three (3) year



period immediately preceding the Adjustment Date; provided, however, that the Annual Minimum Rent shall be never be reduced to less than the Annual Minimum Rent in effect immediately prior to the then-applicable Adjustment Date.

4.4 Renegotiation of Annual Minimum and Percentage Rents. Effective on the twentieth (20th) anniversary of the Effective Date, and each subsequent tenth (10th) anniversary thereafter (each a “Renegotiation Date” and collectively, the “Renegotiation Dates”), the Annual Minimum Rent and Percentage Rent shall be readjusted to the Fair Market Rental Value (as defined below) of the Premises.

4.4.1 Fair Market Rental Value. As used herein, “Fair Market Rental Value” shall mean, as of each Renegotiation Date, the fair market rent (including an annual minimum rent), expressed as respective percentages of Gross Receipts in accordance with the categories enumerated in Subsection 4.2.2, which the Premises would bring, on an absolute net basis, taking into account the Permitted Uses, all relevant and applicable County policies and all of the other terms, conditions and covenants contained in the Lease, if the Premises were exposed for lease for a reasonable time on an open and competitive market to a lessee for the purpose of the Permitted Uses, where County and the respective tenant are dealing at arms length and neither is under abnormal pressure to consummate the transaction, together with all restrictions, franchise value, earning power and all other factors and data taken into account in accordance with California law applicable from time to time to eminent domain proceedings.

Notwithstanding any contrary provision of this Lease, the percentage applicable for Percentage Rent category (c) of Subsection 4.2.2 shall be FOURTEEN AND ONE-HALF PERCENT (14.5%) during the entire Term of the Lease (subject to the reduction during the Credit Period described in category (c)) and such percentage shall not be subject to adjustment at any Renegotiation Date pursuant to this Section 4.4. The requirement in the immediately preceding sentence that the percentage applicable for Percentage Rent category (c) not be subject to adjustment pursuant to this Section 4.4 shall have no effect upon the determination of the Fair Market Rental Value percentages for the other Percentage Rent categories set forth in Subsection 4.2.2, each of which shall be determined in accordance with the terms and provisions of this Section 4.4 without regard to whether the actual Fair Market Rental Value percentage for Percentage Rent category (c) is higher or lower than that set forth in category (c).

Notwithstanding any contrary provision of this Lease, in connection with the Fair Market Rental Value adjustments to the percentages for categories (a), (b) and (c1) through (s1) of Subsection 4.2.2, in no event shall any individual percentage ever be reduced below the percentage for such Percentage Rent category set forth in Subsection 4.2.2, and the requirement set forth in this sentence that no individual Percentage Rent category percentage shall be reduced below that set forth in Subsection 4.2.2 shall have no effect on the determination of the Fair Market Rental Value for any other Percentage Rent category in which the Fair Market Rental Value percentage might be greater than that set forth in Subsection 4.2.2.



4.4.2 Renegotiation Period. Not more than one (1) year nor less than nine (9) months prior to the Renegotiation Date, Lessee shall deliver to County written notice setting forth Lessee's determination of the Fair Market Rental Value of the Premises for each of the rental categories set forth in Subsection 4.2.2 (excepting category (c)), including both Gross Receipts percentages and an Annual Minimum Rent. Lessee's notice shall include a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as Lessee deems relevant or as may be reasonably requested by County. Within one hundred twenty (120) days after receipt of Lessee's notice, if County disagrees with Lessee's determination, County shall deliver to Lessee written notice of such disagreement, together with County's determination of Fair Market Rental Value and a list of comparable properties and/or complete copies of any appraisals which it has utilized in its determination, together with such other information regarding such comparable properties or the Premises as County deems relevant or as may be reasonably requested by Lessee, to the extent available to County. If County fails to deliver to Lessee notice of its disagreement within the aforementioned period and such failure continues for thirty (30) days after receipt of written notice from Lessee, then Lessee's determination of Fair Market Rental Value shall be binding on County as of the Renegotiation Date; provided, however, that Lessee's notice to County shall conspicuously state in bold faced type that such determination of Fair Market Rental Value shall be binding on County unless County delivers notice of its disagreement within such thirty (30) day period.

If Lessee fails to deliver the notice described in the first sentence of this Subsection 4.4.2, setting forth Lessee's determination of Fair Market Rental Value, and such failure continues for thirty (30) days after receipt of written notice from County, then County shall submit its determination of Fair Market Rental Value to Lessee, and Lessee shall have fifteen (15) days after the submittal by County to Lessee of County's determination of Fair Market Rental Value to deliver to County written notice of Lessee's agreement or disagreement with County's determination. If Lessee fails to deliver notice of such disagreement within such fifteen (15) day period, then County's determination of Fair Market Rental Value shall be binding on Lessee as of the Renegotiation Date.

4.4.3 Negotiation of Fair Market Rental Value. If County (or Lessee, as the case may be) does so notify Lessee (or County, as the case may be) of its disagreement as provided in Subsection 4.4.2, County and Lessee shall have sixty (60) days from the end of the applicable response period in which to agree upon the Fair Market Rental Value for the Premises. County and Lessee shall negotiate in good faith during said sixty (60) day period. If the parties do so agree, they shall promptly execute an amendment to this Lease that documents the new Percentage Rent and Annual Minimum Rent so jointly determined, to be effective upon the Renegotiation Date. Director shall be authorized to execute any such amendment on behalf of County. During the period of negotiation, Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to the obligation to continue to pay to County Annual Minimum Rent and Percentage Rent at the then-existing levels.



4.4.4 Arbitration. If County and Lessee fail to reach agreement during the sixty (60) day period set forth in Subsection 4.4.3, then, unless the parties agree otherwise, the Fair Market Rental Value of the Premises shall be determined by arbitration as set forth in Article 16 of this Lease and the parties shall execute an amendment to this Lease setting forth the Fair Market Rental Value as determined by arbitration. In order to determine the Fair Market Rental Value of the Premises, the arbitrator shall take into consideration the terms and provisions applicable to the calculation of the Fair Market Rental Value set forth in Subsection 4.4.1. During the period of arbitration, County and Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to Lessee's obligation to pay to County Annual Minimum Rent and Percentage Rent at then existing levels.

4.4.5 Retroactivity. In the event that, pursuant to Subsections 4.4.3 or 4.4.4 hereof, the parties execute an amendment to this Lease setting forth the Fair Market Rental Value and the Annual Minimum Rent, such amendment, if executed prior to the Renegotiation Date, shall be effective as of the Renegotiation Date; if executed after the Renegotiation Date, such amendment shall be retroactive to the Renegotiation Date. In the event that such amendment is executed after the Renegotiation Date, then, within thirty (30) days after such execution, Lessee shall pay to County, or County shall pay or, at its election, credit to Lessee, the difference, if any, between (a) such Fair Market Rental Value for the Premises and (b) the actual Annual Minimum Rent and Percentage Rent paid by Lessee to County, for the period of time from the Renegotiation Date until the date of such payment. Lessee (with respect to overpayments) or County (with respect to underpayments) shall further be entitled to interest on each portion of such payment from each date on which the applicable rental payments were payable under this Lease to the date paid or credited, whichever is applicable, at the following rates:

- (1) the interest rate applicable to the first six (6) months following the Renegotiation Date shall be equal to the average daily rate for the non-restricted funds held and invested by the Treasurer and Tax Collector of Los Angeles County during that period, computed by the Auditor-Controller ("**County Pool Rate**"); and,
- (2) the interest rate applicable to any period of time in excess of six (6) months following the Renegotiation Date shall be the Prime Rate plus one percent (1%) for the period between the date which is six (6) months after the Renegotiation Date and the date of payment.

No late fee shall be payable under Section 4.5 with respect to any underpayment of rent retroactively readjusted pursuant to this Subsection 4.4.5 as long as Lessee pays to County any such rent underpayment and accrued interest within the thirty (30) day period prescribed in this Subsection 4.4.5.

4.5 Payment and Late Fees. Monthly Minimum Rent shall be paid by Lessee in advance. Payments of Minimum Monthly Rent shall be received by County on or before the first day of each calendar month of the Term. Percentage Rent shall be paid by Lessee in arrears. Percentage Rent due, if any, for a given month of the Term shall be received by County on or before the fifteenth (15th) day of the calendar month following each month of the Term, calculated



as follows: the Lessee shall calculate the total Percentage Rent owed to County for the relevant month of the Term; it shall deduct from said amount the total Monthly Minimum Rent paid to County for that same month; if the resulting amount is a positive number, Lessee shall pay that amount to County; if that amount is a negative number, no Percentage Rent shall be paid to County for that month but nevertheless the Monthly Minimum Rent shall be paid every month of the Term hereof. Percentage Rent payments shall be reconciled annually at the end of each Lease Year, with any Excess Percentage Rent Payments credited as provided in Subsection 4.2.2.5. Payment may be made by check or draft issued and payable to The County of Los Angeles, and mailed or otherwise delivered to the Department of Beaches and Harbors, Los Angeles County, 13483 Fiji Way, Trailer No. 2, Marina del Rey, California 90292, or such other address as may be provided to Lessee by County.

Lessee acknowledges that County shall have no obligation to issue monthly rental statements, invoices or other demands for payment, and that the rental payments required herein shall be payable notwithstanding the fact that Lessee has received no such statement, invoice or demand. In the event any payment is not received by County by the date due, Lessee acknowledges that County will experience additional management, administrative and other costs that are impracticable or extremely difficult to determine. Therefore, a fee ("**Late Fee**") of six percent (6%) of the unpaid amount shall be added to any amount that remains unpaid five (5) days after such amount was due and payable; provided, however, that no Late Fee shall be assessed in the case of the first late payment by Lessee during any Lease Year as long as such late payment is cured within one (1) business day after Lessee receives written notice from County. In addition to any Late Fee, any unpaid rent due shall additionally bear interest at an annual rate equal to the Prime Rate plus three percent (3%), computed from the date when such amounts were due and payable, compounded monthly, until paid. Lessee acknowledges that such Late Fee and interest shall be applicable to all identified monetary deficiencies under this Lease, whether identified by audit or otherwise, and that interest on such amounts shall accrue from and after the date when such amounts were due and payable as provided herein (as opposed to the date when such deficiencies are identified by County).

4.6 Changes of Ownership and Financing Events. Except as otherwise provided in this Section 4.6, each time Lessee proposes either (a) a Change of Ownership (that is not an Excluded Transfer) or (b) a Financing Event, County shall be paid (1) an Administrative Charge equal to the Actual Cost incurred by County in connection with its review and processing of said Change of Ownership or Financing Event ("**Administrative Charge**") and (2) a Net Proceeds Share, in the event such Change of Ownership or Financing Event is consummated. "Net Proceeds Share" shall mean the applicable amount determined pursuant to Section 4.8 of this Lease. Changes of Ownership and Financing Events are further subject to County approval as provided in Articles 12 and 13 of this Lease.

4.6.1 Change of Ownership. "**Change of Ownership**" shall mean (a) any transfer by Lessee of a five percent (5%) or greater direct ownership interest in this Lease, (b) the execution by Lessee of a Major Sublease or the transfer by the Major Sublessee under a Major Sublease of a five percent (5%) or greater direct ownership interest in such Major Sublease, (c) any transaction or series of related transactions not described in subsections 4.6.1(a) or (b) which constitute an Aggregate Transfer of fifty percent (50%) or more of the beneficial interests in Lessee or a Major Sublessee, or (d) a



Change of Control (as defined below) of Lessee or a Major Sublessee. For the purposes of this Lease, "**Change of Control**" shall refer to a transaction whereby the transferee acquires a beneficial interest in Lessee or a Major Sublessee which brings its cumulative beneficial interest in Lessee or a Major Sublessee, as applicable, to greater than fifty percent (50%).

4.6.2 Excluded Transfers. Notwithstanding anything to the contrary contained in this Lease, Changes of Ownership resulting from the following transfers ("**Excluded Transfers**") shall not be deemed to create an obligation to pay County a Net Proceeds Share:

4.6.2.1 a transfer by any direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, to any other direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, including in each case to or from a trust for the benefit of the immediate family (as defined in Subsection 4.6.2.3 below) of any direct or indirect partner, shareholder or member of Lessee who is an individual;

4.6.2.2 a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation, as long as such transfer does not result in a Change of Control of Lessee or a change in the managing member or general partner of Lessee;

4.6.2.3 a transfer of ownership interests in Lessee or in constituent entities of Lessee (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of the transferor, or (iii) from such a trust or any trust that is an owner in a constituent entity of Lessee as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this Subsection 4.6.2.3 is the result of gift, devise, intestate succession or operation of law;

4.6.2.4 a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock (or securities) is (are) traded publicly on a national stock exchange or traded in the over-the-counter market and whose price is regularly quoted in recognized national quotation services;

4.6.2.5 a mere change in the form, method or status of ownership, as long as there is no change in the actual beneficial ownership of this Lease, Lessee or a Major Sublease, and such transfer does not involve an intent to avoid Lessee's obligations under this Lease with respect to a Change of Ownership; or



4.6.2.6 any transfer resulting from a Condemnation by County.

4.6.3 Aggregate Transfer. "Aggregate Transfer" shall refer to the total percentage of the shares of stock, partnership interests, membership interests or any other equity interests (which constitute beneficial interests in Lessee or a Major Sublessee, as applicable) transferred or assigned in one transaction or a series of related transactions (other than those enumerated in Subsection 4.6.2) occurring since the later of (a) the Effective Date, (b) the execution by Lessee of this Lease or a Major Sublease, as applicable, or (c) the most recent Change of Ownership upon which an Administrative Charge was paid to County; provided, however, that there shall be no double counting of successive transfers of the same interest in the case of a transaction or series of related transactions involving successive transfers of the same interest. Isolated and unrelated transfers shall not be treated as a series of related transactions for purposes of the definition of Aggregate Transfer.

4.6.4 Beneficial Interest. As used in this Lease, "beneficial interest" shall refer to the ultimate direct or indirect ownership interests in Lessee (or a Major Sublessee, as applicable), regardless of the form of ownership and regardless of whether such interests are owned directly or through one or more layers of constituent partnerships, corporations, limited liability companies or trusts.

4.6.4.1 Interests Held By Entities. Except as otherwise provided herein, an interest in Lessee, this Lease or a Major Sublease held or owned by a partnership, limited liability company, corporation or other entity shall be treated as owned by the partners, members, shareholders or other equity holders of such entity in proportion to their respective equity interests, determined by reference to the relative values of the interests of all partners, members, shareholders or other equity holders in such entity. Where more than one layer of entities exists between Lessee or a Major Sublessee, as applicable, and the ultimate owners, then the foregoing sentence shall be applied successively to each such entity in order to determine the ownership of the beneficial interests in Lessee, this Lease or a Major Sublease, as appropriate, and any transfers thereof. Notwithstanding any contrary provision hereof, no limited partner, member or shareholder having a direct or indirect ownership interest in Lessee or a Major Sublease shall have any liability to County under this Lease.

4.6.4.2 Ownership of Multiple Assets. The proceeds of any event constituting or giving rise to a Change of Ownership shall be apportioned to this Lease or a Major Sublease, whichever is applicable, and to any other assets transferred in the same transaction in proportion to the relative fair market values of the respective assets transferred. The Net Proceeds Share shall be calculated only by reference to the amount of such proceeds apportioned to this Lease, a Major Sublease or the beneficial interests therein, as applicable.

4.7 Calculation and Payment. A deposit of Fifteen Thousand Dollars (\$15,000) toward the Administrative Charge shall be due and payable upon Lessee's notification to County of the proposed Change of Ownership (other than an Excluded Transfer) or Financing Event and request



for County's approval thereof. If the transaction is approved, the balance of the Administrative Charge, if any, and the Net Proceeds Share shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership (other than an Excluded Transfer) or Financing Event giving rise to the obligation to pay such fee, regardless of whether or not money is transferred by the parties in connection with such consummation. If County disapproves the proposed transaction then, within thirty (30) days after notice of its disapproval, County shall deliver to Lessee a written notice setting forth the Administrative Charge, together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under Section 4.6. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay County the balance of the Administrative Charge otherwise allowable under Section 4.6. within thirty (30) days after receipt of the notice from County setting forth the Administrative Charge and any supporting documentation reasonably requested by Lessee within five (5) business days after its receipt of such notice. Together with its request for County approval of the proposed transaction, Lessee, a Major Sublessee or the holder of a beneficial interest in this Lease or a Major Sublease, as applicable, shall present to County its calculation of the Net Proceeds Share (if any) anticipated to be derived therefrom, which shall include the adjustment to Improvement Costs, if any, which may result from the payment of such Net Proceeds Share ("**Calculation Notice**"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Net Proceeds Share. Within thirty (30) days after the receipt of the Calculation Notice and all information or data reasonably necessary for County to verify the calculations within the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Net Proceeds Share set forth therein or the related adjustment of Improvement Costs, if any. If County disagrees with the amounts set forth in the Calculation Notice, County shall provide Lessee with the reason or reasons for such disagreement. Failing mutual agreement within thirty (30) days after the expiration of County's thirty (30) day review period, the dispute shall be resolved by arbitration as set forth in Article 16 of this Lease in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the Net Proceeds Share in respect thereof or the related adjustment, if any, in Improvement Costs, then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Net Proceeds Share and (ii) Lessee shall deposit the disputed portion of the Net Proceeds Share into an interest bearing escrow account at the closing of the transaction, which portion shall be distributed in accordance with the arbitration of the dispute pursuant to Article 16 of this Lease, in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value.

4.7.1 Transfer of Less Than Entire Interest. Where a Change of Ownership has occurred by reason of the transfer of less than all of an owner's beneficial interest in Lessee or a Major Sublessee, the Net Proceeds Share shall be due and payable with respect to those portions of such beneficial interest that have been acquired by the transferee since the latest of (a) the Effective Date, or (b) the date of the most recent event creating Lessee's obligation to pay a Net Proceeds Share (including without limitation an approval by County of a transfer at a price which falls below the threshold for paying a Net Proceeds Share) with respect to this Lease, a Major Sublease or a



Change of Ownership that included a transfer of the beneficial interest that is the subject of the current transfer.

4.7.2 Purchase Money Notes. If the transferor of an interest accepts a note made by the transferee of such interest in payment of all or a portion of the acquisition cost (a "**Purchase Money Note**"), such note shall be valued at its face amount; provided that if the interest rate on such Purchase Money Note is in excess of a market rate, then the value of such note shall be increased to reflect such above-market rate. Any disputes between County and Lessee as to whether the interest rate on a Purchase Money Note is in excess of a market rate or with respect to the valuation of a Purchase Money Note with an above-market rate of interest, shall be settled by arbitration pursuant to Article 16 below.

4.7.3 Obligation to Pay Net Proceeds Share and Administrative Charge. With respect to a Change of Ownership giving rise to the Administrative Charge and Net Proceeds Share, the obligation to pay the Administrative Charge and Net Proceeds Share shall be the obligation of Lessee, and in the case in which the identity of the Lessee changes with the transfer, shall be the joint and several obligation of both the Lessee entity prior to the transfer and the Lessee entity after the transfer. In the event that the Administrative Charge or Net Proceeds Share is not paid when due with respect to the beneficial interest in this Lease, then County shall have the remedies set forth in Section 13.3 hereof.

4.8 Net Proceeds Share. In the event of a Change of Ownership, the "**Net Proceeds Share**" shall be the amount by which the greater of the following exceeds the Administrative Charge paid by Lessee to County in connection with such Change of Ownership: (a) the lesser of (i) the Net Transfer Proceeds from such Change of Ownership, or (ii) five percent (5%) of the Gross Transfer Proceeds from such Change of Ownership; or (b) twenty percent (20%) of the Net Transfer Proceeds from such Change of Ownership. Notwithstanding the foregoing, with respect to the first Change of Ownership that occurs prior to the tenth (10th) anniversary of the earlier of the Completion Date or the Required Completion Date (but not with respect to the second or any subsequent Change of Ownership during such ten (10) year period, and not with respect to any Change of Ownership after the tenth (10th) anniversary of the earlier of the Completion Date or the Required Completion Date), the reference to "five percent (5%)" in the immediately preceding sentence shall instead be "two percent (2%)" and the reference to "twenty percent (20%)" in the immediately preceding sentence shall instead be "eight percent (8%)."

With respect to a Financing Event, the "Net Proceeds Share" shall be the amount (if any) by which (I) twenty percent (20%) of the Net Refinancing Proceeds from such Financing Event exceeds (II) the Administrative Charge paid by Lessee to County in connection with the transaction.

"**Gross Transfer Proceeds**" shall mean an amount equal to the gross sale or transfer proceeds and other consideration given for the interests transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor which constitutes a Change of Ownership that is not an Excluded Transfer, such consideration shall in no event be deemed to be less than the fair value of the interests transferred).



Notwithstanding any contrary provision of this Section 4.8, in the calculation of Net Transfer Proceeds and Net Refinancing Proceeds derived from a Change of Ownership or Financing Event, as applicable, pursuant to the remaining provisions of Section 4.8 below, there shall be no duplication of any amounts to be subtracted from Gross Transfer Proceeds or the gross principal amount of any Financing Event (as applicable), even if a particular amount qualifies for subtraction under more than one category.

4.8.1 Transaction by Original Lessee. In the case of a transfer by Lessee (but not a transfer by a successor or assignee of Lessee) constituting a Change of Ownership for which a Net Proceeds Share is payable, "**Net Transfer Proceeds**" shall mean the Gross Transfer Proceeds from the transfer, less the following costs with respect to Lessee (but not its successors or assignees):

4.8.1.1 The sum of (a) Thirty-Four Million Four Hundred Six Thousand Five Hundred Ninety-Four Dollars (\$34,406,594.00), plus (b) the amount of the "Option Fee" paid by Lessee under the Option Agreement, plus (c) actual out-of-pocket costs incurred by Lessee for its third party consultants and attorneys in connection with the negotiation and consummation of the Option Agreement and this Lease, plus (d) the Actual Costs reimbursed by Lessee to County in connection with the negotiation and consummation of the Option Agreement and this Lease (the sum of the amounts in (a), (b), (c) and (d) are referred to as the "**Base Value**"), plus (e) the final actual out-of-pocket design, permitting, entitlement and construction (including construction of the Promenade) costs paid by Lessee in connection with the Redevelopment Work or other physical capital Improvements or Alterations to the Premises after the Effective Date constructed by Lessee in compliance with Article 5 of this Lease, which costs have been submitted to County within ninety (90) days after the completion of such Improvements (or in the case of phased construction, within ninety (90) days after the completion of the applicable phase of such Improvements), together with a written certification from Lessee and Lessee's construction lender that such costs are accurate, and which costs shall have been approved in writing by Director (the amounts described in this clause (e) are referred to as "**Improvement Costs**"). Without limitation of the immediately preceding sentence, Improvement Costs shall include all actual out-of-pocket hard and soft construction costs paid to unaffiliated third parties (except that Lessee shall be entitled to include, to the extent actually incurred, construction management and/or development fees paid to an affiliate as long as the total amount of all construction management, development and similar fees paid to unaffiliated and affiliated parties does not exceed an aggregate of four percent (4%) of the hard construction costs), and actual construction period interest on Lessee's construction loan from an unaffiliated third party lender.

4.8.1.2 Commissions, title and escrow costs, legal fees and expenses, and other bona fide closing costs actually paid to third parties and documented to the satisfaction of Director, which costs were directly attributable to the consummation of the particular transaction giving rise to the obligation to pay County a Net Proceeds Share (collectively, "**Documented Transaction Costs**").



4.8.1.3 That portion of the principal amount of any Financing Event after the Effective Date that constituted Net Refinancing Proceeds on which Lessee paid County a Net Proceeds Share.

4.8.2 Transfer by Lessee's Successor. In the case of a transfer by a Lessee other than the original Lessee, "Net Transfer Proceeds" shall mean the Gross Transfer Proceeds received by that successor, minus the following costs with respect to such successor Lessee:

4.8.2.1 The greatest of (a) the sum of the Base Value, plus Improvement Costs incurred subsequent to the Effective Date but prior to the acquisition of the leasehold interest by such successor, (b) the purchase price such successor paid to Lessee or such successor's seller for the interest acquired or (c) the original principal amount of any Financing Event or Financing Events (on a non-duplicative basis) after such successor Lessee's acquisition of the leasehold, and with respect to which County was paid a Net Proceeds Share, plus the principal amount of any financing existing as of the date on which such seller acquired the leasehold or subsequently obtained by Lessee, if such financing has not been refinanced, but without duplication;

4.8.2.2 Improvement Costs actually paid by such successor Lessee after such successor Lessee's acquisition of its leasehold interest in the Premises (but not duplicative of the principal amount of any Financing Event described in clause 4.8.2.1(c) above, the proceeds of which were used to fund such Improvement Costs); provided that such costs have been submitted to County, with an appropriate lender and Lessee certification, as provided in Subsection 4.8.1.1; and

4.8.2.3 Documented Transaction Costs with respect to the transfer of the interest by the successor.

4.8.3 Transfers of Major Sublessee's Interest. With respect to any Change of Ownership described in Subsection 4.6.1(b), Subsections 4.8.1 and 4.8.2 shall apply, except that any rents or other amounts received by Lessee from the Major Sublessee a percentage of which is passed through to County under any provision of this Lease (other than payment of Net Proceeds Share) shall be disregarded in the computation of Net Transfer Proceeds.

4.8.4 Other Transfers. With respect to any Change of Ownership that is not an Excluded Transfer and is not described in subsections 4.8.1 through 4.8.3 (e.g., a transfer of an interest in an entity holding a direct or indirect ownership interest in this Lease or in a Major Sublease), Subsections 4.8.1 and 4.8.2 shall apply to such Change of Ownership, except that in lieu of deducting the Base Value and Improvement Costs in determining Net Transfer Proceeds, the cost to the transferor of the interest being transferred or which was transferred in the past but constitutes a portion of an Aggregate Transfer (which cost shall in no event be deemed to be less than a pro rata share of the Base Value and Improvement Costs (or following a transfer by the original Lessee, such cost shall in no event be deemed to be less than a prorata share of the sum of Subsections



4.8.2.1 plus 4.8.2.2 as of the respective date of the transfer of each interest in the aggregation pool)) shall be deducted. Furthermore, in the event that any such Change of Ownership produces a Net Proceeds Share, the then existing Improvement Costs shall be increased by an appropriate amount to reflect the basis on which the Net Proceeds Share was calculated, and the basis of the interest that was transferred and for which a Net Proceeds Share was paid shall also be increased for subsequent transfers of the same interest, as if realized by Lessee upon a transfer of a comparable interest in this Lease or in a Major Sublease, as applicable.

4.8.5 Net Refinancing Proceeds. “**Net Refinancing Proceeds**” shall mean the gross principal amount of any Financing Event after the Effective Date, plus in the case of secondary financing the original principal balance of any existing financing that is not repaid as a part of such secondary financing, minus (a) the greatest of (i) the Base Value, (ii) the original principal amount of any subsequent refinancing by Lessee in connection with which County was paid a share of Net Refinancing Proceeds (plus if the financing described in this clause (ii) was secondary financing, the original principal balance of any then existing financing that was not repaid as a part of such secondary financing), or (iii) in the case of a successor Lessee the purchase price such successor paid to Lessee or such successor’s seller for the interest acquired, (b) any portion of the proceeds of the Financing Event which shall be used for Improvement Costs, (c) other Improvement Costs incurred by Lessee and not paid for or repaid with the proceeds of any Financing Event, and (d) Documented Transaction Costs with respect to such Financing Event.

4.8.6 Transfers to which Sections 4.6 through 4.8 Apply. The provisions of Sections 4.6 through 4.8 hereof shall apply to all transfers of beneficial interests in this Lease or a Major Sublease which constitute a Change of Ownership, unless such transfers are otherwise excluded pursuant to this Lease. Furthermore, the provisions of Sections 4.6 through 4.8 of this Lease, and the principles set forth therein, shall apply to any transfer or series of transfers primarily structured for the purpose of avoiding the obligation to pay Net Proceeds Share set forth in Sections 4.6 through 4.8 of this Lease and which, viewed together, would otherwise constitute a Change of Ownership.

4.8.7 Payment. Net Proceeds Share shall be due and payable concurrently with the transfer giving rise to the obligation to pay such share and shall be the joint and several obligation of the transferee and transferor. Net Proceeds Share not paid when due shall be subject to a late fee of six percent (6%) of the amount due, together with interest on such Net Proceeds Share at the Applicable Rate from the date due until paid; provided, however, that in the case of a dispute as to the correct amount of the Net Proceeds Share there shall be no late fee payable as long as Lessee timely pays to County the undisputed portion of the Net Proceeds Share and deposits the disputed portion thereof in an interest bearing escrow account at the closing of the transaction (or delivers to County a letter of credit or other security reasonably acceptable to County in the amount of such disputed portion) to secure payment thereof. In the event that the proceeds of the transaction giving rise to the obligation to pay Net Proceeds Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Net Proceeds Share shall reflect the fair market value of such non-cash assets as of the date of the Change of Ownership,



which shall be set forth in the Calculation Notice. Notwithstanding the foregoing, in the case of a Change of Ownership described in Subsection 4.6.1(b), the Net Proceeds Share shall be payable to County as and when the Net Transfer Proceeds are received, with the Net Proceeds Share being equitably apportioned to the payments derived by Lessee from said Change of Ownership (other than any payments passed through to County under this Lease).

4.8.8 Shareholder, Partner, Member, Trustee and Beneficiary List. As part of the submission for approval of a Change of Ownership or Financing Event, and upon the request of County (which requests shall be no more frequent than once per year), Lessee shall provide County with an updated schedule listing the names and mailing addresses of (i) all shareholders, partners, members and other holders of equity or beneficial interests in Lessee, this Lease or the Major Sublessee under any Major Sublease, and (ii) all shareholders, partners, members and other holders of equity or beneficial interests in any of the constituent shareholders, partners, members or other holders of equity or beneficial interests in Lessee or any Major Sublessee under any Major Sublease, if such interest exceeds a five percent (5%) or greater beneficial interest in Lessee or the Major Sublessee under a Major Sublease. In the event that such shareholder, partner, member or other interest holder is a trust, Lessee shall include in such schedule the name and mailing address of each trustee of said trust, together with the names and mailing addresses of each beneficiary of said trust with greater than a five percent (5%) actuarial interest in distributions from, or the corpus of, said trust; provided, however, that to the extent that Lessee is prevented by Applicable Laws from obtaining such information regarding the beneficiaries of said trust(s), Lessee shall have complied with this provision if Lessee uses its commercially reasonable efforts to obtain such information voluntarily and provides County with the opportunity to review any such information so obtained. Lessee agrees to use its best efforts to provide County with any additional information reasonably requested by County in order to determine the identities of the holders of five percent (5%) or greater beneficial interests in Lessee or a Major Sublessee.

5. REDEVELOPMENT WORK; ALTERATIONS.

5.1 Redevelopment Work. Promptly following the Effective Date, Lessee shall (a) renovate all existing land-side Improvements located on the Premises, including without limitation all existing apartment buildings, the interiors of all existing two hundred five (205) apartment units, building facades, club house, interior and exterior common areas, landscaping, hardscapes and other portions of the land-side Improvements, all as set forth in the renovation plan attached to this Lease as Exhibit B (the "Renovation Plan"), and (b) replace all existing two hundred thirty (230) anchorage slips and eleven (11) end-ties with two hundred seven (207) new anchorage slips and eleven (11) end-ties in accordance with the Renovation Plan and according to specifications and in a configuration and design meeting current Marina del Rey standards for new anchorage improvement construction, as shown on the Renovation Plan, with concrete construction, ADA access, in-dock pump-out facilities, Promenade and other associated Improvements, all as set forth in the Redevelopment Plan (the Improvements described in this clause (b) collectively referred to as the "**Anchorage Improvements**"). All required parking for the Improvements shall be located on the Premises. All of the work described in this Section 5.1 or in the Renovation Plan is referred to herein as the "**Redevelopment Work.**" The Redevelopment Work shall be performed



in accordance with the Renovation Plan and the Final Plans and Specifications for the Redevelopment Work (as established under the Option Agreement if the Final Plans and Specifications for the Redevelopment Work are approved by Director prior to the Effective Date, or as established under Subsection 5.3.3 below if the Final Plans and Specifications for the Redevelopment Work are not approved by Director until after the Effective Date).

Lessee shall be responsible for the acquisition and compliance with all required governmental (including, without limitation, County, Coastal Commission and Design Control Board) planning and entitlement approvals required to perform the Redevelopment Work.

Lessee shall be solely responsible for all costs and expenses incurred in connection with the performance of the Redevelopment Work (including all design, entitlement and construction activities). Lessee shall expend on the Redevelopment Work not less than the applicable Required Cost Amount (as defined below) for (i) out-of-pocket hard costs, excluding land or the value of the existing leasehold or existing Improvements, but including (A) hard costs expended for the Redevelopment Work on the apartment units, the clubhouse, the building facades, the interior and exterior common areas, the Anchorage Improvements, the Promenade, landscaping, hardscapes and all parking and storage areas, as applicable; (B) general conditions and supervision not to exceed a total of five percent (5%) of hard costs; and (C) profit and overhead not to exceed a total of ten percent (10%) of hard costs; and (ii) soft costs not to exceed seven and one-half percent (7.5%) of hard costs. The **"Required Cost Amount"** for all of the Redevelopment Work other than the Anchorage Improvements means \$12,042,030, as increased (but not decreased) by the same percentage increase (if any) in the Consumer Price Index during the period from (I) the month of the date of the Option Agreement until (II) the month of the later of the commencement of the construction of the portion of the Redevelopment Work that excludes the Anchorage Improvements or the Effective Date of this Lease. The **"Required Cost Amount"** for the Anchorage Improvements means \$7,941,442, as increased (but not decreased) by the same percentage increase (if any) in the Consumer Price Index during the period from (I) the month of the date of the Option Agreement until (II) the month of the later of the commencement of the construction of the Anchorage Improvements or the Effective Date. For purposes of determining the month of the commencement of the applicable portion of the Redevelopment Work in connection with the calculation of the Required Cost Amount for such portion of the Redevelopment Work as set forth above, Lessee shall not be considered to have commenced such portion of the Redevelopment Work unless Lessee thereafter diligently and continuously prosecutes the completion of such portion of the Redevelopment Work, and if there is a cessation in the work with respect to such applicable portion of the Redevelopment Work, then the date of commencement of construction shall be the date that the applicable work is recommenced after such cessation and thereafter diligently and continuously prosecuted to completion. Lessee's expenditures to satisfy the Required Cost Amount for the Redevelopment Work shall be subject to the reasonable verification and approval by Director. If and to the extent Lessee has performed any of the Redevelopment Work after the date of the Option Agreement but prior to the Effective Date, then subject to the immediately preceding sentence, and subject to the requirement that prior to the commencement of such Redevelopment Work Lessee provided written notice to Director of the specific components of the Redevelopment Work that Lessee intended to perform prior to the Effective Date, Lessee shall be entitled to include the permitted costs (as described above) incurred by Lessee for such components of the



Redevelopment Work performed after the date of the Option Agreement and prior to the Effective Date for purposes of satisfying the Required Cost Amount.

Lessee shall comply with all time deadlines and schedules described in this Article 5 relating to the completion of the design and construction of the Redevelopment Work (subject to an extension set forth in this Article 5 for Force Majeure delay). Lessee's failure to do so shall, if not cured within the applicable cure period set forth in Subsection 13.1.2, constitute an Event of Default. Except to the extent Lessee is prevented from so doing by Force Majeure as provided in Section 5.6, Lessee shall cause (1) the commencement of construction of the Redevelopment Work, other than the Anchorage Improvements, to occur on or before that date (the "**Required Construction Commencement Date**") which is sixty (60) days following the Effective Date; (2) all of the Redevelopment Work, other than the Anchorage Improvements, to be completed in accordance with the Final Plans and Specifications for the Redevelopment Work on or before the date (the "**Required Completion Date**") that is the third (3rd) anniversary of the Effective Date; (3) the commencement and performance of the Redevelopment Work with respect to the Anchorage Improvements in accordance with a phasing schedule reasonably approved by Director that is structured to facilitate the completion of all of the Anchorage Improvements not later than the Required Anchorage Improvements Completion Date; and (4) the completion of the Redevelopment Work with respect to the Anchorage Improvements in accordance with the Final Plans and Specifications for the Redevelopment Work not later than the fifth (5th) anniversary of the Effective Date (the "**Required Anchorage Improvements Completion Date**"). Unless approved by Director prior to the Effective Date, Lessee shall submit to Director for Director's approval a phasing schedule for the construction of the Redevelopment Work pertaining to the Anchorage Improvements not later than sixty (60) days after the Effective Date.

Lessee acknowledges that the principal inducement to County to enter into this Lease, including the extension of the Term as provided herein, is the timely commencement, performance and completion by Lessee of the Redevelopment Work. In the event that Lessee fails to comply with its obligations under this Section 5.1 to commence and complete the Redevelopment Work by the applicable dates set forth herein, as extended by Section 5.6, then in addition to any other right or remedy which County may have in connection therewith, this Lease shall be automatically amended such that the terms and provisions of this Lease revert back to the terms and provisions of the Existing Lease (including, without limitation, the Existing Expiration Date), as modified by the "Non-Exercise Amendment" described in the Option Agreement (the "**Reversion Amendment**").

5.2 Application of Article 5 to Redevelopment Work. The remaining sections of this Article 5 pertain to the construction of the Redevelopment Work and to any other Alterations (as defined below) which Lessee may be required or desire to make to the Premises during the Term, including without limitation, the Subsequent Renovation described in Section 5.11 below. For purposes of this Lease, Alterations shall mean the construction of any alterations or modifications to the Improvements located on the Premises or the construction of any new Improvements. Both the Redevelopment Work and the Subsequent Renovation shall be considered to be Alterations. Accordingly, except as expressly provided in this Article 5, all of the terms and provisions of Article 5 of this Lease shall be applicable to the Redevelopment Work and the Subsequent Renovation.



5.3 Plans and Specifications for Alterations. Lessee shall make no Alterations without the prior written approval of the Director, which approval shall not be unreasonably withheld, conditioned or delayed. Prior and as a condition precedent to the construction of any Alterations, Lessee shall submit to Director, for Director's approval, the plans, specifications and other materials described in this Section 5.3 pertaining to such Alterations (except to the extent such submittals and approvals have been previously completed with respect to Redevelopment Work pursuant to the Option Agreement). All Alterations must be consistent with the Permitted Uses set forth in Article 3 of this Lease.

5.3.1 Schematics and Narrative. Lessee shall submit to Director six (6) sets of schematic plans together with a narrative description and construction cost estimate summary clearly delineating the nature, size, configuration and layout of the Alterations. Such plans shall, among other things, clearly delineate the architectural theme or motif of the Alterations and shall identify and illustrate the boundaries of the Premises and all rights-of-way or other areas reserved to County or third parties located thereon. After receipt of such plans, Director shall have sixty (60) days within which to approve or disapprove such submission in writing. Failure of Director to approve such submission in writing within said sixty (60) day period shall be deemed disapproval of said submission. Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Director's objections to the submission. After approval of schematic plans (or subsequent approval of preliminary plans or Final Plans and Specifications and costs) by Director, if changes in such plans are required by conditions of approval of the Alterations imposed by the California Coastal Commission or other governmental agency with jurisdiction thereover, Lessee shall promptly advise Director in writing of such changes and Director shall not disapprove those changes that constitute Approved Governmental Changes.

5.3.2 Preliminary Plans and Specifications. As soon as practicable, but in no event later than thirty (30) days after Director's approval of the materials submitted pursuant to Subsection 5.3.1, Lessee shall submit to Director six (6) sets of preliminary plans, outline specifications and construction cost estimates for the Alterations. The preliminary plans, outline specifications and construction cost estimate shall conform to, expand upon and reflect a natural evolution from the descriptions and estimates set forth in the approved schematic plans and narrative. Any difference in the scope, size, configuration, arrangement or motif of the Improvements from those described in the approved schematics and narrative shall be separately identified and described. Director shall have twenty-one (21) days from receipt within which to approve or reasonably disapprove such submission, and Director may disapprove said preliminary plans only on the grounds that (i) they do not reflect a natural evolution from the approved schematic plans or that they materially differ from the approved schematic plans and narrative (exclusive of any Approved Governmental Changes), or (ii) that any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Director as a part of, the schematic plans do not meet the requirements for the Improvements set forth in this Article 5. Failure of Director to disapprove said preliminary plans within twenty one (21) days after Director's receipt thereof shall be deemed Director's approval thereof; provided, however, that in the event that the



preliminary plans, outline specifications and construction cost estimates contain substantial changes from the approved schematics and narrative, then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the preliminary plans, outline specifications and construction cost estimates, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

**“PURSUANT TO SUBSECTION 5.3.2 OF THE AMENDED AND
RESTATED LEASE AGREEMENT, IF THESE MATERIALS
CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS
PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY ONE
(21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO
APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE
THESE MATERIALS IN WRITING WITHIN TWENTY-ONE (21)
DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL
CONSTITUTE YOUR APPROVAL OF THEM.”**

Following any disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Director's objections to the submission.

5.3.3 Final Plans and Specifications. As soon as practicable, but in no event later than sixty (60) days after the later of (a) approval of the preliminary plans, outline specifications and construction cost estimate by Director, or (b) final approval by the California Coastal Commission (if required), Lessee shall submit for approval by Director six (6) complete sets of final plans, detailed specifications and a construction cost estimate for the Alterations, together with one (1) set of appropriate structural computations, identical to those requested or required by the County Director of Public Works incident to the issuance of building permits under the relevant provisions of the Los Angeles County Building Code. Lessee shall file duplicate copies of the final plans, detailed specifications and construction cost statement required by this Section with the County Director of Public Works, together with the necessary and appropriate applications for building permits. Any difference in the scope, size, configuration, arrangement or motif of the Alterations from those described in the approved preliminary plans and specifications shall be separately identified and described. Director shall have twenty one (21) days after receipt within which to approve or disapprove such submission, and Director may disapprove such submission only on the grounds that (i) they do not reflect a natural evolution from or that they materially differ from the approved preliminary plans, outline specifications and construction cost estimates (exclusive of any Approved Governmental Changes), or (ii) that any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Director as a part of, the preliminary plans do not meet the requirements for the Improvements set forth in this Article 5. Failure of Director to disapprove said final plans and related materials within twenty one (21) days after Director's receipt shall be deemed Director's approval thereof; provided, however, that in the event that the final plans, detailed specifications and construction cost estimate contain substantial changes



from the approved preliminary plans and specifications, then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the final plans, detailed specifications and construction cost estimate, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

"PURSUANT TO SUBSECTION 5.3.3 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY-ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM."

Following any disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Director's objections to the submission. Director's approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that it shall be deemed reasonable to disapprove any submission not in substantial conformity with the approved preliminary plans and specifications (exclusive of any Approved Governmental Changes), or which contains new, different or additional specifications for the Improvements which were not expressly set forth in, and approved by Director as a part of, the preliminary plans and which do not meet the requirements for the Improvements set forth in this Article 5. No material modification shall be made to the Alterations described in the approved final plans, specifications and costs (the "**Final Plans and Specifications**") without the prior written approval of Director, which shall not be unreasonably withheld, conditioned or delayed.

5.4 Conditions Precedent to the Commencement of Construction. No Redevelopment Work or other Alterations shall be commenced until each and all of the following conditions have been satisfied:

5.4.1 Permits and Other Approvals. Lessee shall have received and furnished the Department with copies of all permits, licenses and other governmental approvals necessary for commencement of the Redevelopment Work or other Alterations.

5.4.2 Copies of Construction Contracts. Lessee shall have furnished County with copies of any contract(s) entered into between Lessee and any general contractor(s) employed for the purpose of constructing the Redevelopment Work or other Alterations.

5.4.3 Performance and Payment Bonds. Lessee shall, at its own cost and expense, have furnished County with the following separate corporate surety bonds (or with the substitute security set forth below) not less than ten (10) days prior to the



commencement of construction, which bonds (or other security) must be in form and content reasonably satisfactory to County:

5.4.3.1 A corporate surety performance bond ("**Performance Bond**") issued by a surety company licensed to transact business as such in the State of California, in an amount not less than one hundred percent (100%) of the amount of all hard construction costs approved by County in conjunction with the approved Alteration. The Performance Bond and its issuer shall be in all material respects reasonably satisfactory to County. It shall name Lessee as principal and said issuer as surety, and County as obligee (and which may include an Encumbrance Holder as an additional obligee), assuring full and satisfactory performance by Lessee of Lessee's obligations herein to build, construct and otherwise complete the Improvements described in the approved final plans and specifications.

5.4.3.2 A corporate surety payment bond, issued by a surety company licensed to transact business as such in the State of California, with Lessee as principal, said company as surety and County as obligee (and which may include an Encumbrance Holder as an additional obligee), in a sum equal to one hundred percent (100%) of the total construction cost anticipated to be incurred in connection with the approved work, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of said construction work or for labor done thereon of any kind whatsoever and protecting County from any and all liability, loss or damages arising out of or in connection with any failure to make such payment (the "**Payment Bond**"). The Payment Bond shall be in form and content reasonably satisfactory to County.

In the event that construction is performed by a licensed general contractor on behalf of Lessee, provided that such contractor provides County with a bond or bonds compliant with this Subsection, and in all material respects reasonably satisfactory to County and otherwise complying with this Subsection, County will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Lessee required by this Subsection 5.4.3.

5.4.4 Alternative Security. In lieu of providing the Payment and Performance Bonds, Lessee may provide any of the following alternative security: (i) a certificate of deposit, cash or United States governmental security, (ii) a letter of credit, or (iii) a Set Aside Letter from Lessee's construction lender. The foregoing security shall be in an amount equal to one hundred percent (100%) of the construction contract price, and shall permit County to draw thereon to complete the construction of the Improvements if the same have not been completed by Lessee or if an Event of Default has occurred under this Lease. In addition, Director also shall have the authority to accept in lieu of the Payment and Performance Bonds, so-called "Subguard" insurance in such amount, on such terms and issued by such carrier as approved by Director, in combination with such other security, such as a completion guaranty, as acceptable to Director. Any alternative security provided by Lessee pursuant to this subsection may name County and Lessee's construction lender as co-beneficiaries. A condition precedent to Lessee's right to provide the alternate security described in this Subsection 5.4.4 shall be delivery by



Lessee to County of an opinion of counsel from a law firm and in a form acceptable to County to the effect that the construction work does not constitute a public work of improvement requiring the delivery of the bonds described in Subsection 5.4.3 above. Director shall have the authority, in his discretion, to modify, waive or reduce the amount of any bonds or alternate security required hereunder.

5.4.5 Evidence of Financing. Lessee shall have provided evidence reasonably satisfactory to County of its having sufficient financial resources, as reasonably determined by Director, to complete the Redevelopment Work or other Alterations, as applicable. Lessee shall furnish Director with copies of all final notes, guarantees, partnership, shareholder or limited liability company agreements, construction loan and/or permanent loan commitments, as applicable, evidence of equity, documents creating and/or perfecting security interests, and all documents and exhibits referred to in any of the foregoing, together with any and all recorded documents affecting an interest in the Premises.

5.4.6 Work Schedule. With respect to the Redevelopment Work, Lessee shall have provided County with a construction schedule which will result in the completion of the Redevelopment Work on or before the Required Completion Date or Required Anchorage Completion Date (as applicable).

5.5 County Cooperation. In its proprietary capacity, the Department shall cooperate with and assist Lessee, to the extent reasonably requested by Lessee, in Lessee's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the performance by Lessee of the Redevelopment Work described in Section 5.1 above and the Subsequent Renovation described in Section 5.11 below, as applicable. Such cooperative efforts may include the Department's joinder in any application for such approval, consent, permit or variance, where joinder therein by the Department is required or helpful; provided, however, that Lessee shall reimburse County for the Actual Cost incurred by the Department in connection with such joinder or cooperative efforts. Notwithstanding the foregoing, Lessee and County acknowledge that the approvals given by County under this Lease are approvals pursuant to its authority under Sections 25536 and 25907 of the California Government Code; that approvals given under this Lease in no way release Lessee from obtaining, at Lessee's expense, all permits, licenses and other approvals required by law for the construction of Improvements on the Premises and operation and other use of such Improvements on the Premises; and that the Department's duty to cooperate and County's approvals under this Lease do not in any way modify or limit the exercise of County's governmental functions or decisions as distinct from its proprietary functions pursuant to this Lease.

5.6 Delays in Commencement and Completion of Redevelopment Work. Upon commencement of construction of the Redevelopment Work Lessee shall thereafter diligently pursue the completion of such construction by the Required Completion Date or the Required Anchorage Completion Date, as applicable (subject to Force Majeure as set forth below). If Lessee is delayed in the commencement of construction or completion of the Redevelopment Work due to Force Majeure, then the Required Construction Commencement Date, the Required Completion Date and/or the Required Anchorage Improvements Completion Date (if and to the extent that the event actually causes a delay in the commencement or completion of construction



of the applicable components of the Redevelopment Work) shall be extended by the period of the delay caused by such Force Majeure; provided, however, that any such extension shall be limited to the period of the delay caused by such events and no such delay shall be considered to have commenced unless Lessee notifies Director in writing of the commencement of such delay within ten (10) business days after Lessee's discovery of the delay; and provided, further, that the aggregate amount of extensions to any of the Required Construction Commencement Date, the Required Completion Date or the Required Anchorage Improvements Completion Date (as applicable) shall not exceed two (2) years. Lessee and Director shall discuss and attempt to agree on the length of time of any entitled delay due to Force Majeure pursuant to this Section 5.6. If they are unable to agree within thirty (30) days after written notice from Lessee of the event or occurrence giving rise to Lessee's claim to an entitlement to a delay under this Section 5.6, the matter shall be arbitrated as set forth in Article 16.

5.7 Manner of Construction.

5.7.1 General Construction Standards. All construction, alteration, modification or repairs permitted herein shall be accomplished by Lessee with due diligence. Lessee shall take all commercially reasonable steps to minimize any damage, disruption or inconvenience caused by such work and make adequate provisions for the safety and convenience of all persons affected thereby. Lessee shall repair, at its own cost and expense, any and all damage caused by such work, and shall restore the area upon which such work is performed to a condition which is at least equal to or better than the condition which existed before such work was commenced. Additionally, Lessee shall pay or cause to be paid all costs and expenses associated therewith and shall indemnify, defend and hold County harmless from and against all damages, costs, expenses, losses or claims arising out of or in connection with the performance of such work, except to the extent that such damages, costs, expenses, losses or claims are caused by County, its employees, contractors or agents. Dust, noise and other effects of such work shall be controlled using accepted measures customarily utilized in order to control materially adverse effects associated with construction projects in well populated and developed areas of Southern California.

5.7.2 Utility Work. Any work performed by or on behalf of Lessee or any occupant of the Premises to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service shall be performed in a manner that minimizes material interference with the provision of such services to the Premises and other persons.

5.7.3 Construction Safeguards. Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Lessee, all necessary safeguards for the protection of workers and the public.

5.7.4 Compliance with Construction Documents and Laws; Issuance of Permits. All Improvements on the Premises shall be completed in substantial compliance with any construction documents approved by County and also in compliance with all Applicable Laws. Lessee shall have the sole responsibility for obtaining all necessary



permits and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

5.7.5 Notice to Director; Damage to County Improvements. Lessee further agrees to keep Director apprised of the progress of the work to the end that Director may timely inspect the Premises to assure proper safeguarding of any County-owned improvements existing on or around the Premises, including but not limited to seawalls, underground conduits and utility lines. If any such County-owned improvement is damaged in connection with said construction activity, Lessee agrees to repair such damage immediately at no cost or expense to County or, in the event that Lessee fails to effectuate such repair within five (5) business days after written notice from County (or such longer period as may be reasonably required to complete such repair so long as Lessee commences such repair within five (5) business days and thereafter diligently prosecutes same to completion), County may enter upon the Premises to make such repairs, the Actual Cost of which shall be paid by Lessee within two (2) business days after demand by County. In the case of damage to a County-owned improvement that does not involve risk of personal injury, risk of damage to other improvements, risk of curtailment or diminishment of service or access, or any other emergency situation, the references to "five (5) business days" in this Subsection 5.7.5 shall be changed to "thirty (30) days."

5.7.6 Rights of Access. Representatives of the Department of Beaches and Harbors of County shall, upon reasonable notice and at reasonable times, have the right of reasonable access to the Premises and the Improvements thereon without charges or fees, for the purpose of ascertaining compliance with the terms and conditions of this Lease, including but not limited to the inspection of the construction work being performed. Such access shall be reasonably calculated to minimize interference with Lessee's construction and/or operations. Lessee shall have the right to have a representative present to accompany the representatives of the Department of Beaches and Harbors of County in connection with such access. In the event of any emergency which is life-threatening or which involves the threat of potential substantial damage, County shall have the right to enter the Premises immediately and without notice to or accompaniment by Lessee.

5.7.7 Notice of Completion; As-Built Drawings. Upon completion of the Redevelopment Work or any other Alterations, Lessee shall file or cause to be filed in the Official Records of the County of Los Angeles a Notice of Completion (the "**Notice of Completion**") with respect to the Improvements and Lessee shall deliver to County, at no cost to County, two (2) sets of Conoflex or Mylar final as-built plans and specifications of the Improvements.

5.8 Use of Plans. Contracts between Lessee and any architect, design professional or licensed contractor in connection with Alterations shall provide, in form and content reasonably satisfactory to County, for the assignment thereof to County as security to County for Lessee's performance hereunder, and County shall be furnished with a copy of any such contract, together with the further agreement of the parties thereto, that if this Lease is terminated by County due to Lessee's default, County may, at its election, use any plans and specifications created by such

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architect, design professional or contractor in connection with the contract for such Alterations, upon the payment of any sums due to any party thereto. County's right to elect to use plans and specifications as described above shall not include the unauthorized right to use any trade marks, trade names or logos of Lessee or any such architect, design professional or contractor, or the right to use such plans for anything other than Alterations on the Premises.

5.9 Where Director Approval Not Required. Notwithstanding the foregoing, and notwithstanding anything to the contrary in this Article 5, Lessee shall not be required to seek or obtain the approvals of Director described in this Article 5 (including those set forth in Section 5.3) for Alterations (other than the Redevelopment Work) where all of the following conditions are satisfied: (i) the total cost of the project is less than One Hundred Thousand Dollars (\$100,000), adjusted annually to reflect the increase or decrease in the ENR Index from and after the Effective Date (provided, however, that in no event shall such adjustment result in a reduction of the threshold for Director approval to less than One Hundred Thousand Dollars (\$100,000)); (ii) none of the proposed construction activity is structural in nature; and (iii) none of the proposed construction, additions, modifications or changes materially affect or are visible from the exterior of the Premises; provided, however, that whenever Lessee makes or constructs or permits any improvements in or to the Premises, Lessee shall (a) give written notice thereof (including a description of the work to be done and the permits obtained for such work), and (b) furnish a copy of "as-built" plans upon completion of such work to County.

5.10 Protection of County. Nothing in this Lease shall be construed as constituting the consent of County, express or implied, to the performance of any labor or the furnishing of any materials or any specific Improvements, alterations or repairs to the Premises of any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in any such manner as would give rise to the filing of mechanics' liens or other claims against the Premises or County.

5.10.1 Posting Notices. County shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which County may deem necessary for the protection of County, the Premises and the Improvements thereon from mechanics' liens or other claims. Lessee shall give County at least ten (10) business days prior written notice of the commencement of any work to be done on the Premises, in order to enable County timely to post such notices.

5.10.2 Prompt Payment. Lessee shall make, or cause to be made, prompt payment (subject to reasonable dispute) of all monies due and owing to all persons doing any work or furnishing any materials or supplies to Lessee or any of its contractors or subcontractors in connection with the Premises and the Improvements thereon. Lessee shall have the right to contest any such amount; provided, however, the entire expense of any such contest (including interest and penalties which may accrue) shall be the responsibility of Lessee.

5.10.3 Liens; Indemnity. Subject to Lessee's rights to contest the same prior to payment, Lessee shall keep the Premises and any Improvements thereon free and clear of all mechanics' liens and other liens arising out of or in connection with work done for



Lessee and/or any parties claiming through Lessee. Lessee agrees to and shall indemnify, defend and hold County harmless from and against any claim, liability, loss, damages, costs, expenses, attorneys' fees incurred in defending and all other expenses on account of claims of lien(s) of laborers or materialmen or others for work performed or materials or supplies furnished to Lessee or persons claiming under it.

In the event any lien is recorded, Lessee shall, within twenty (20) days after demand, furnish the bond described in California Civil Code Section 3143, or successor statute, which results in the removal of such lien from the Premises, together with any other evidence requested by County to evidence that such claim will be paid, removed or discharged as a claim against the Premises and/or County.

5.11 Subsequent Renovation. In addition to the Redevelopment Work to be performed by Lessee pursuant to Section 5.1, Lessee shall be required to complete a renovation of the Improvements during the remaining Term of the Lease in accordance with the terms and provisions of this Section 5.11 (the "**Subsequent Renovation**"). The construction of the Subsequent Renovation shall be commenced by Lessee not earlier than January 1, ____ [INSERT YEAR THAT IS 19 YEARS AFTER EFFECTIVE DATE] and completed by Lessee not later than December 31, ____ [INSERT YEAR THAT IS 21 YEARS AFTER EFFECTIVE DATE]. The Subsequent Renovation shall consist of such renovation and construction work as necessary to re-position the Improvements to then current market conditions, including without limitation, the renovation of the residential Improvements to a condition and appearance commensurate with that of other then recently constructed or renovated residential apartment projects in Marina del Rey. Prior to the commencement of construction of the Subsequent Renovation, Lessee shall submit to Director a renovation plan for the Subsequent Renovation (the "**Subsequent Renovation Plan**"), which renovation plan shall (a) describe the proposed renovation work in such detail as reasonably requested by Director, (b) include a design, governmental approval and construction schedule for the work described therein, (c) include a budget for all work costs, and (d) address such other matters as Director reasonably requests. The Subsequent Renovation Plan shall be submitted by Lessee to County not later than such date as, taking into consideration the approval periods described in this Section 5.11 and Section 5.3 above, and the estimated time required to obtain all necessary governmental approvals and permits, will reasonably be expected to permit the completion by Lessee of the Subsequent Renovation by the date required under this Section 5.11. Director shall have sixty (60) days after receipt of the Subsequent Renovation Plan within which to reasonably approve or disapprove the Subsequent Renovation Plan, or to approve the Subsequent Renovation Plan subject to conditions imposed by Director in his or her reasonable judgment. Failure of Director to notify Lessee in writing of his or her approval or disapproval of the Subsequent Renovation Plan shall be deemed Director's disapproval of the Subsequent Renovation Plan. Upon Director's approval of the Subsequent Renovation Plan, Lessee shall proceed to satisfy all conditions in this Article 5 to the commencement of the Subsequent Renovation and to commence and complete the Subsequent Renovation in accordance with the Subsequent Renovation Plan and the terms and conditions of this Article 5. Lessee's failure to comply with the schedule approved by Director as part of Subsequent Renovation Plan and/or to meet the construction commencement and completion deadlines pertaining to the Subsequent Renovation set forth in this Section 5.11 (except to the extent due to Force Majeure delay) shall, if not cured within the cure period set forth in Subsection 13.1.2, constitute an Event of Default. If any dispute arises as to whether Director has failed to exercise reasonable judgment



in the approval or disapproval of the Subsequent Renovation Plan, the parties shall negotiate in good faith to resolve such dispute and if they are unable to do so within thirty (30) days after Lessee has received Director's written disapproval (or, in the event of a deemed disapproval, thirty (30) days after the end of Director's sixty (60) day review period set forth above in this paragraph) such dispute shall be submitted to arbitration pursuant to Article 16 of this Lease.

5.12 Subsequent Renovation Fund. Commencing with the month following the month during which the fifth (5th) anniversary of the earlier of the Completion Date or the Required Completion Date occurs, and continuing until the completion of the Subsequent Renovation, Lessee shall establish and maintain a reserve fund (the "**Subsequent Renovation Fund**") in accordance with the provisions of this Section 5.12 for the purpose of funding the cost of the Subsequent Renovation; provided, however, that Lessee's obligation to perform the Subsequent Renovation shall not be limited to the funds available in the Subsequent Renovation Fund. The Subsequent Renovation Fund shall be held in an account established with a reputable financial institution reasonably acceptable to Director (which shall include Lessee's Encumbrance Holder) into which deposits shall be made by Lessee pursuant to this Section 5.12. On or before the fifteenth (15th) day of each month during the period during which the Subsequent Renovation Fund is required to be maintained by Lessee hereunder, Lessee shall make a monthly deposit to the Subsequent Renovation Fund in an amount equal to one percent (1.0%) of total Gross Receipts for the previous month. All interest and earnings on the Subsequent Renovation Fund shall be added to the Subsequent Renovation Fund, but shall not be treated as a credit against the Subsequent Renovation Fund deposits required to be made by Lessee pursuant to this Section 5.12. Disbursements shall be made from the Subsequent Renovation Fund only for costs for the design, permitting, entitlements and construction of the Subsequent Renovation which have been reasonably approved by Director; provided, however, if funds remain in the Subsequent Renovation Fund after the Subsequent Renovation has been completed and all costs for the Subsequent Renovation paid in full, then any such excess funds shall be released promptly to Lessee. Prior to the disbursement of any amounts from the Subsequent Renovation Fund, Lessee shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the Subsequent Renovation Fund. Director shall have no obligation to approve the disbursement of amounts from the Subsequent Renovation Fund unless and until Director has approved Lessee's Subsequent Renovation Plan for such Subsequent Renovation and Lessee has furnished to Director evidence reasonably satisfactory to Director that Lessee has sufficient financial resources (taking into consideration the Subsequent Renovation Fund) to pay for all costs of such Subsequent Renovation.

5.13 Capital Improvement Fund. Commencing with the month following the month during which the fifth (5th) anniversary of the Completion Date occurs, and continuing during the remaining Term of the Lease, Lessee shall establish and maintain a reserve fund (the "**Capital Improvement Fund**") in accordance with the provisions of this Section 5.13 for the cost of Permitted Capital Expenditures (as defined below) for the Premises. Lessee and County agree and acknowledge that the purpose of the Capital Improvement Fund shall be to provide funds for the costs of additions, replacements, renovations or significant upgrades of or to the Improvements on the Premises, including building exteriors and major building systems (such as HVAC, mechanical, electrical, plumbing, vertical transportation, security, communications, structural or roof) that significantly increase the capacity, efficiency, useful life or economy of



operation of the Improvements or their major systems, after the completion of the Redevelopment Work ("**Permitted Capital Expenditures**"). Notwithstanding any contrary provision herein, the Capital Improvement Fund shall not be used to fund any portion of the cost of the Redevelopment Work or the Subsequent Renovation. In addition, the Capital Improvement Fund shall not be used for such items as remodels and building additions, new project amenities (e.g., barbeques or fitness equipment) or new common area furniture. Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the buildings or their major systems in an ordinarily efficient operating condition, but that do not materially add to their value or appreciably prolong their useful life. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied. Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Lessee. By way of example, set forth on Exhibit E attached to this Lease are categories of Permitted Capital Expenditures that qualify as proper costs to be funded from the Capital Reserve Fund. All specific purposes and costs for which Lessee desires to utilize amounts from the Capital Improvement Fund shall be subject to Director's approval, which approval shall not be unreasonably withheld, conditioned or delayed.

The Capital Improvement Fund shall be held in an account established with a reputable financial institution (including Lessee's Encumbrance Holder) reasonably acceptable to Director into which deposits shall be made by Lessee pursuant to this Section 5.13. Lessee shall have the right to partly or fully satisfy the Capital Improvement Fund obligations of this Section 5.13 with capital improvement reserves required by Lessee's Encumbrance Holder, as long as such capital improvement reserves are in all material respects administered in accordance, and otherwise comply, with the terms, provisions and requirements of this Section 5.13.

Commencing on the fifteenth (15th) day of the month following the month during which the fifth (5th) anniversary of the Completion Date occurs and continuing on or before the fifteenth (15th) day of each month thereafter during the remaining Term, Lessee shall make a monthly deposit to the Capital Improvement Fund in an amount equal to two percent (2.0%) of total Gross Receipts for the previous month. All interest and earnings on the Capital Improvement Fund shall be added to the Capital Improvement Fund, but shall not be treated as a credit against the Capital Improvement Fund deposits required to be made by Lessee pursuant to this Section 5.13.

No disbursements shall be made from the Capital Improvement Fund until after the tenth (10th) anniversary of the Completion Date. In addition, no disbursements shall be made from the Capital Improvement Fund after the tenth (10th) anniversary of the Completion Date to cure deficiencies arising from the failure of Lessee to maintain and repair the Improvements in accordance with the requirements of this Lease prior to the tenth (10th) anniversary of the Completion Date. Disbursements shall be made from the Capital Improvement Fund for costs reasonably approved by Director which have been incurred after the tenth (10th) anniversary of the Completion Date and that satisfy the requirements of this Section 5.13. Capital Improvement Funds shall be used only after all other sources such as warranty proceeds and product insurance funds are exhausted (or determined to be unavailable). For the purpose of obtaining Director's prior approval of any Capital Improvement Fund disbursements, Lessee shall submit to Director

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on an annual calendar year basis a capital expenditure plan for the upcoming year that details the amount and purpose of anticipated Capital Improvement Fund expenditures for which Lessee requests Director's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Any anticipated expenditure set forth in such capital expenditure plan which is approved by Director as an acceptable Capital Improvement Fund disbursement shall be considered pre-approved by Director (but only up to the amount of such expenditure set forth in the annual capital expenditure plan) for the duration of the upcoming year. Lessee shall have the right during the course of each year to submit to Director for Director's approval revisions to the then current capital expenditure plan in effect for such year, or individual expenditures not noted on the previously submitted capital expenditure plan. Prior to the disbursement of any amounts from the Capital Improvement Fund, Lessee shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the Capital Improvement Fund.

All amounts then-existing in the Capital Improvement Fund shall be expended for Permitted Capital Expenditures not later than ten (10) years prior to the expiration of the Term of the Lease. Capital Improvement Fund deposits made after such date shall continue to be used for Permitted Capital Expenditure purposes under this Section 5.13; provided, however, if County elects to require Lessee to remove the Improvements at the end of the Term and requires Lessee to provide security to secure its obligation to perform such removal obligations in accordance with Subsection 2.3.2 of this Lease, then Lessee shall have the right to contribute the deposits thereafter required to be made by Lessee under this Section 5.13 towards Lessee's obligations to fund the security requirements in Subsection 2.3.2, but only if and to the extent that there are sufficient funds made available in the Capital Improvement Fund for any needed Permitted Capital Expenditures, as determined by Director in Director's reasonable discretion.

6. CONDEMNATION.

6.1 Definitions.

6.1.1 Condemnation. "**Condemnation**" means (1) the exercise by any governmental entity of the power of eminent domain, whether by legal proceedings or otherwise, and (2) a voluntary sale or transfer to any Condemnor (as hereafter defined), either under threat of Condemnation or while legal proceedings for Condemnation are pending.

6.1.2 Date of Taking. "**Date of Taking**" means the earliest of (a) the date that the Condemnor has the right of occupancy pursuant to an order for possession issued by a court asserting jurisdiction over the Premises; (b) the date that the final order of Condemnation is issued in the event of a transfer by power of eminent domain; or (c) title is transferred to any Condemnor through voluntary sale or transfer, either under threat of Condemnation or while legal proceedings for Condemnation are pending.

6.1.3 Award. "**Award**" means all compensation, sums or anything of value awarded, paid or received from a total or partial Condemnation.



6.1.4 Condemnor. “**Condemnor**” means any public or quasi-public authority, or private corporation or individual, having the power of eminent domain.

6.2 Parties’ Rights and Obligations to be Governed by Lease. If, during the Term of this Lease, there is any Condemnation of all or any part of the Premises, any Improvements on the Premises or any interest in this Lease by Condemnation, the rights and obligations of the parties shall be determined pursuant to the provisions of this Article 6.

6.3 Total Taking. If the Premises are totally taken by Condemnation, this Lease shall terminate on the Date of Taking.

6.4 Effect of Partial Taking. If a portion of the Premises or the Improvements thereon are taken by Condemnation, this Lease shall remain in effect, except that Lessee may elect to terminate this Lease if the remaining portion of the Premises are rendered unsuitable (as defined herein) for Lessee’s continued use for the purposes contemplated by this Lease. The remaining portion of the Premises shall be deemed unsuitable for Lessee’s continued use if, following a reasonable amount of reconstruction, Lessee’s business on the Premises could not be operated at a commercially reasonable economic level taking into consideration the amount of funds, if any, in excess of the Award, necessary to continue such operation. Lessee must exercise its right to terminate by giving County written notice of its election within ninety (90) days after the Date of Taking. Such notice shall also specify the date of termination, which shall not be prior to the Date of Taking. Failure to properly exercise the election provided for in this Section 6.4 will result in this Lease’s continuing in full force and effect, except that Annual Minimum Rent shall be abated pursuant to Section 6.5, below.

In the event that Lessee does not elect to terminate this Lease as provided above, then Lessee, whether or not the Awards or payments, if any, on account of such Condemnation shall be sufficient for the purpose, shall, at its sole cost and expense, within a reasonable period of time, commence and complete restoration of the remainder of the Premises as nearly as possible to its value, condition and character immediately prior to such Condemnation, taking into account, however, any necessary reduction in size or other change resulting from the Condemnation; provided, however, that in case of a Condemnation for temporary use, Lessee shall not be required to effect restoration until such Condemnation is terminated.

6.5 Effect of Partial Taking on Rent. If any portion of the Premises is taken by Condemnation and this Lease remains in full force and effect as to the portion of the Premises not so taken (a “**Partial Taking**”), the Annual Minimum Rent shall be reduced as of the date of the Partial Taking to an amount equal to the Annual Minimum Rent multiplied by the ratio of the fair market value of the portion of the Premises not so taken to the fair market value of the entire Premises immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the imminent taking. Upon the next Adjustment Date, as described in Subsection 4.3 above, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Rent paid by Lessee to County prior to the Date of Taking shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Premises which remains after the Partial Taking bears to the fair market value of the entire Premises immediately prior to the Partial Taking. If the parties cannot agree upon the appropriate Annual Minimum



Rent, the matter shall be settled through arbitration in the manner set forth in Article 16 hereof. Any determinations of fair market value made pursuant to this Section 6.5 in connection with any arbitration proceeding shall be predicated upon the "income approach" or "income capitalization approach" to property valuation, as defined in The Dictionary of Real Estate Appraisal and/or The Appraisal of Real Estate, published by the Appraisal Institute or any successor organization (the "**Income Approach**"). All other obligations of Lessee under this Lease, including but not limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

6.6 Waiver of Code of Civil Procedure Section 1265.130. Each party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a Partial Taking of the Premises.

6.7 Payment of Award. Awards and other payments on account of a Condemnation, less costs, fees and expenses incurred in the collection thereof ("**Net Awards and Payments**"), shall be applied as follows:

6.7.1 Partial Taking Without Termination. Net Awards and Payments received on account of a Condemnation, other than a total Condemnation or a Partial Taking which results in termination hereof or a taking for temporary use, shall be held by County and shall be paid out to Lessee or Lessee's designee(s), in monthly installments equal to the sum set forth in Lessee's written request for payment submitted to County together with supporting invoices and documentation demonstrating that the requested sums are for payments to contractors, consultants, architects, engineers, counsel, or materialmen engaged in the restoration of the Premises and any Improvements. Such requested sums shall be paid by County to Lessee or its designee(s) within thirty (30) days after County has received such request in writing reasonably supported by accompanying invoices and documentation. In the event that County disputes any sum requested by Lessee pursuant to the preceding sentence, County shall promptly pay the undisputed portion and provide Lessee with a written notice detailing the reasons for County's dispute. Thereafter, Director and Lessee shall promptly meet and negotiate in good faith to resolve any dispute; provided, however, that any dispute not resolved within thirty (30) days after Lessee has received notice from County of its dispute shall be submitted to arbitration pursuant to Article 16. The balance, if any, shall be divided between County and Lessee pro rata, as nearly as practicable, based upon (1) the then value of County's interest in the Premises (including its interest hereunder) and (2) the then value of Lessee's interest in the remainder of the Term of this Lease including bonus value. Any determinations of fair market value made pursuant to this Section 6.7 shall be predicated upon the Income Approach. In case of a Condemnation described in this Subsection 6.7.1, Lessee shall furnish to County evidence satisfactory to County of the total cost of the restoration required by Section 6.4.

6.7.2 Taking For Temporary Use. Net Awards and Payments received on account of a taking for temporary use shall be paid to Lessee; provided, however, that if any portion of any such award or payment is paid by the Condemnor by reason of any damage to or destruction of the Improvements, such portion shall be held and applied as provided in the first sentence of Section 6.7.1, above.



6.7.3 Total Condemnation and Partial Taking with Termination. Net Awards and Payments received on account of a total Condemnation or a Partial Taking which results in the termination of this Lease shall be allocated in the following order:

First: There shall be paid to County an amount equal to the greater of (a) the sum of (1) the present value of all Annual Rent and other sums which would become due through the expiration of the Term if it were not for the taking less, in the event of a Partial Taking, an amount equal to the present value of the fair rental value of the portion of the Premises (with the Improvements thereon) not subject to the Partial Taking, from the date of the Partial Taking through the expiration of the Term and (2) the present value of the portion of the Premises (with the Improvements thereon) subject to the taking from and after the expiration of the Term or (b) in the event of a Partial Taking, the present value of the fair market rental value of the portion of the Premises (with the Improvements thereon) subject to the Partial Taking, from and after the expiration of the Term.

Second: There shall be paid to any Encumbrance Holder an amount equal to the sum of any unpaid principal amount of any Encumbrance secured by the Premises plus costs, expenses, and other sums due pursuant the loan documents, if any, and any interest accrued thereon, all as of the date on which such payment is made; and then

Third: There shall be paid to Lessee an amount equal to the value of Lessee's interest in the remainder of the Term of this Lease, including the value of the ownership interest in and use of the Improvements constructed on the Premises, determined as of the date of such taking, less payments made under paragraph Second above. For such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4.

Fourth: The balance shall be paid to County.

In the event of a total Condemnation or a Partial Taking that results in the termination of this Lease, County shall promptly pay or authorize the payment of, as applicable, to Lessee all sums held by County or third parties as the Capital Improvement Fund, the Subsequent Renovation Fund, the Security Deposit, and, upon completion by Lessee of its obligations under Section 2.3 of this Lease with respect to any portion of the Premises not taken in the Condemnation, the remaining Demolition Security.

6.7.4 Disputes. Any dispute under Article 6 concerning the fair market value of the Premises or any portion thereof, computation of present value or the determination of the amount of Annual Minimum Rent or Percentage Rent or other sums which would have become due over the Term of this Lease which are not resolved by the parties, shall be submitted to arbitration pursuant to Article 16 of this Lease. Such valuations, computations and determinations of value shall be made utilizing the Income Approach.

7. SECURITY DEPOSIT.



7.1 Amount and Use. Lessee shall deliver to and maintain with County a security deposit (the “**Security Deposit**”) in an amount equal to the sum of three (3) times the Monthly Minimum Rent in effect from time to time during the Term (i.e., adjusted to reflect any change in the Monthly Minimum Rent during the Term of this Lease). At any time after the Completion Date that during the entire then-preceding three (3) year period Lessee has timely paid all monetary obligations under this Lease on or before the due date thereof, Lessee has not been assessed any maintenance deficiencies under Section 10.4 that were not cured within the cure period set forth in Section 10.4 (or that were disputed by Lessee, with such dispute resolved in Lessee’s favor pursuant to Article 16), and Lessee has not otherwise committed an Event of Default under the Lease (collectively, the “**Reduction Requirement**”), Lessee shall have the right to reduce the Security Deposit to two (2) times the Monthly Minimum Rent in effect from time to time during the Term. If as of any date after a reduction in the Security Deposit under this paragraph the Reduction Requirement fails to continue to be satisfied, then within ten (10) days after written notice from County, Lessee shall be required to increase the Security Deposit to three (3) times the Monthly Minimum Rent in effect from time to time during the Term until such time as Lessee once again satisfies the Reduction Requirement, in which event the terms and provisions of the immediately preceding sentence shall once again apply (until such time (if any) as Lessee subsequently fails to satisfy to Reduction Requirement).

The Security Deposit shall secure Lessee’s obligations pursuant to this Lease, and may be drawn on by County, in whole or in part, to cover (a) delinquent rent not paid by Lessee within any applicable notice and cure period, and (b) any other Events of Default of Lessee under this Lease. The Security Deposit shall be applied at the discretion of County. Lessee shall have the right to maintain the Security Deposit in form of cash or in the form of a certificate of deposit, letter of credit or other approved investment instrument acceptable to County with respect to form, content and issuer. As long as no Event of Default by Lessee exists under the Lease, Lessee shall be entitled to any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to County in the form of a certificate of deposit or other approved investment instrument (as opposed to cash, on which Lessee shall not be entitled to interest). Provided that no Event of Default then exists under the Lease, at the end of each Lease Year Lessee shall be entitled to a credit for all unexpended interest accruing to Lessee’s benefit with respect to the Security Deposit during such Lease Year pursuant to the immediately preceding sentence. Notwithstanding any contrary provision hereof, County shall have the right at any time to apply any accrued but uncredited interest (which accrued during non-Event of Default periods) against delinquent rents and other amounts owed by Lessee under the Lease.

7.2 Replacement. In the event that some or all of the Security Deposit is drawn against by County and applied against any delinquent rent not paid by Lessee within any applicable notice or cure period, or against other Events of Default of Lessee hereunder, Lessee shall, within ten (10) days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with County, or cause the issuer of any letter of credit to reinstate the letter of credit to its full face amount, so that at all times that this Lease is in effect (other than between the date of the application of funds by County and the expiration of said ten (10) day period), the full amount of the Security Deposit shall be available to County. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in Subsection 13.1.3, shall constitute an Event of Default hereunder.



7.3 Renewal. Any letter of credit procured by Lessee and delivered to County shall provide for notice to County by the issuer thereof no less than sixty (60) days prior to the expiration of the term of such letter of credit in the event that the issuer thereof is not irrevocably committed to renew the term of such letter of credit. In the event that, thirty (30) days prior to the expiration of such letter of credit, Lessee has not provided County with satisfactory evidence of its renewal or replacement, or has not provided County with adequate replacement security, County may draw down upon the letter of credit and hold the funds as security for Lessee's obligations as set forth in this Lease and may apply the funds to cover delinquent rent not paid by Lessee within any applicable notice and cure period and/or any other Event of Default of Lessee under this Lease.

8. INDEMNITY.

Except to the extent caused by the gross negligence or willful misconduct of any such indemnitee, Lessee shall at all times relieve, defend, indemnify, protect, and save harmless County and its respective Boards, officers, agents, consultants, counsel, employees and volunteers from any and all claims, costs, losses, expenses or liability, including expenses and reasonable attorneys' fees incurred in defending against the same by an attorney selected by Lessee and reasonably satisfactory to County, for the death of or injury to persons or damage to property, including property owned or controlled by or in the possession of County or any of its Board, officers, agents, employees or volunteers, to the extent that such arises from or is caused by (a) the operation, maintenance, use, or occupation of the Premises by Lessee or its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, (b) the negligent acts or omissions of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, or (c) the failure of Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees to observe and abide by any of the terms or conditions of this Lease or any applicable law, ordinance, rule, or regulation. The obligation of Lessee to so relieve, indemnify, protect, and save harmless County and each of its respective Boards, officers, agents, consultants, counsel, employees and volunteers, shall continue during any periods of occupancy or of holding over by Lessee, its agents, officers, employees, licensees, concessionaires, permittees or Sublessees, beyond the expiration of the Term or other termination of this Lease.

9. INSURANCE.

9.1 Lessee's Insurance. Without limiting Lessee's indemnification of County, during the Term of this Lease Lessee shall provide and maintain the following insurance issued by companies authorized to transact business in the State of California by the Insurance Commissioner and having a "general policyholders rating" of at least A-VII (or such higher rating as may be required by an Encumbrance Holder) as set forth in the most current issue of "A.M. Best's Key Rating Guide" or an equivalent rating from another industry-accepted rating agency.



9.1.1 General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) and endorsed to name County as an additional insured, with limits of not less than the following:

| | |
|--|--------------|
| General Aggregate: | \$20,000,000 |
| Products/Completed Operations Aggregate: | \$20,000,000 |
| Personal and Advertising Injury: | \$10,000,000 |
| Each Occurrence: | \$10,000,000 |

Lessee may satisfy the above coverage limits with a combination of primary coverage ("Primary Coverage") and excess liability coverage ("Umbrella Coverage") (as long as (a) Lessee's Primary Coverage is at least Five Million Dollars (\$5,000,000) per occurrence, Five Million Dollars (\$5,000,000) annual aggregate, and (b) the combination of such Primary Coverage and Umbrella Coverage provides County with the same protection as if Lessee had carried primary coverage for the entire limits and coverages required under this Subsection 9.1.1.

9.1.2 Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than One Million Dollars (\$1,000,000) of Primary Coverage and One Million Dollars (\$1,000,000) of Umbrella Coverage, for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto." During any period of operation of valet parking facilities, Lessee also shall provide Garagekeeper's Legal Liability coverage, (written on ISO form CA 99 37 or its equivalent) with limits of not less than Three Million Dollars (\$3,000,000) for this location.

9.1.3 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State of California and for which Lessee is responsible, and including Employers' Liability coverage with limits of not less than the following:

| | |
|--------------------------|-------------|
| Each Accident: | \$1,000,000 |
| Disease - policy limit: | \$1,000,000 |
| Disease - each employee: | \$1,000,000 |

9.1.4 Commercial Property insurance covering damage to the Premises, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30), excluding earthquake, and including Ordinance or Law Coverage, written for the full replacement value of the Improvements, with a deductible no greater than \$250,000 or 5% of the property value, which ever is less, and also including business interruption, including loss of rent equal to eighteen (18) months



of rent, with proceeds payable to Lessee and County as their interests may appear and utilized for repair and restoration of the Premises and Improvements. Notwithstanding the foregoing, during any period during which no Improvements exist on the Premises or all of the existing Improvements are being demolished in connection with the construction of Redevelopment Work, the obligation to provide insurance under this Subsection 9.1.4 shall not be applicable so long as the insurance coverage described in Subsection 9.1.5 below is carried.

9.1.5 For construction projects on the Premises, including the Redevelopment Work, any other Alterations or restoration of the Improvements, Lessee or Lessee's contractor or subcontractors will provide the following insurance (County reserves the right to determine the coverage and coverage limit required on a project by project basis.):

9.1.5.1 Builder's Risk Course of Construction to insure against damage from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30). This insurance shall be endorsed to include ordinance or law coverage, coverage for temporary offsite storage, debris removal, pollutant cleanup and removal, testing, preservation of property, excavation costs, landscaping, shrubs and plants and full collapse coverage during construction (without restricting collapse coverage to specified perils. This insurance shall be written on a completed-value basis and cover the entire value of the construction project, against loss or damage until completion and acceptance by Lessee.

9.1.5.2 General Liability. Such insurance shall be written on ISO policy form CG 00 01 or its equivalent with limits as reasonably required by the County for the Redevelopment Work or Alterations. The products/completed operations coverage shall continue to be maintained for the following periods: (a) in the case of the Redevelopment Work, three (3) years after the date the Redevelopment Work is completed and accepted by the Lessee, or (b) in the case of Alterations after the completion of the Redevelopment Work, such period after the date such Alterations are completed and accepted by Lessee as reasonably determined by County, but not to exceed three (3) years after such completion and acceptance.

9.1.5.3 Automobile Liability. Such coverage shall be written on ISO policy form CA 00 01 or its equivalent with a limit of liability as reasonably required by the County for the Redevelopment Work or Alterations. Such insurance shall include coverage for all "owned," "hired" and "non-owned" automobiles, or coverage for "any auto."

9.1.5.4 Professional Liability. Such insurance shall cover liability arising from any error, omission, negligent or wrongful act of the contractor and/or licensed professional (i.e. architects, engineers, surveyors, etc.). This coverage shall also provide an extended two-year reporting period commencing upon termination or cancellation of the construction project. The limits of the coverage required under this Subsection 9.1.5.4 shall be (a) Three Million Dollars (\$3,000,000) with respect to the prime architect for the Redevelopment Work (or



such lesser amount as required by Director for the prime architect in connection with any subsequent Alterations), and (b) One Million Dollars (\$1,000,000) with respect to each other contractor, subcontractor, architect, engineer, surveyor or other licensed professional rendering services in connection with the design or construction of the Redevelopment Work or subsequent Alterations, provided that Director shall have the discretion to reduce the coverage limits under this clause (b) if appropriate in the judgment of Director based on the nature and scope of the services being provided.

9.1.5.5 Asbestos Liability or Contractors Pollution Liability insurance, if construction requires remediation of asbestos or pollutants, and if such insurance is available. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of asbestos in compliance with governmental mandate or order. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the contractor's or subcontractor's Automobile Liability Insurance. Contractor shall maintain limits as reasonably required by the County for the Redevelopment Work or Alterations.

9.1.6 If the use of the Premises or Improvements involves any manufacture, distribution or service of alcoholic beverages, Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) with a liability limit of not less than Five Million Dollars (\$5,000,000) per occurrence and an annual aggregate of Ten Million Dollars (\$10,000,000), which limits may be covered by a combination of Primary Coverage and Umbrella Coverage. If written on a claims made form, the coverage shall also provide an extended two-year reporting period commencing upon the termination or cancellation of the Lease.

9.1.7 If use of the Premises or Improvements involves a marina operation, berthing, docking, and/or launching of boats and/or pleasure crafts, and/or use of floating docks, piers and/or ramps, Lessee shall carry Marina Operator's Liability insurance with limits of not less than Five Million Dollars (\$5,000,000) per occurrence, and Ten Million Dollars (\$10,000,000) aggregate. If written on a "claims made" form, the coverage shall also provide an extended two (2) year reporting period commencing upon the expiration or earlier termination of the Lease, or replacement coverage shall be maintained until such time.

9.2 Provisions Pertaining to Property Insurance. The insurance coverage required in Subsections 9.1.4 and 9.1.5.1 shall name County as an additional insured and any Encumbrance Holder as loss payee. Subject to Section 12.8, upon the occurrence of any loss, the proceeds of property and builder's risk insurance shall be held by County in trust for the named insureds as their interests appear, and shall be disbursed by County on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice; provided, however, that if the insurance proceeds received with respect to a loss are less than \$500,000 (as adjusted to reflect any increase in the ENR Index during the period from the Effective Date through the



date of the loss), the Encumbrance Holder shall have the right to hold and disburse such proceeds to pay the renovation and repair of Improvements in accordance with the terms of the loan agreement or deed of trust with Lessee's Encumbrance Holder. In the event of a loss, except as expressly provided to the contrary in this Lease, Lessee shall be obligated to use the insurance proceeds received by Lessee to rebuild or replace the destroyed or damaged buildings, structures, equipment, and Improvements, in accordance with the procedures set forth hereinabove for the initial construction, except as otherwise provided in Article 10 hereof. Subject to Section 12.8, any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee.

9.3 General Insurance Requirements. Subject to the immediately following grammatical paragraph, a duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9, in such form as shall be reasonably acceptable to County, shall be filed with Director no later than the Effective Date, provided that the evidence of the insurance coverage required under Subsection 9.1.5 shall be required to be delivered by Lessee prior to the commencement of any Redevelopment Work or Alterations. All certificates of insurance shall (a) specifically identify the Lease; (b) clearly evidence all coverages required under the Lease; (c) identify any deductibles or self-insured retentions exceeding \$25,000 or such other commercially reasonable amount as approved by the Director; and (d) evidence all other requirements under this Article 9. The policy or policies of insurance shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to Director or ten (10) business days in case of cancellation for failure to pay the premium. At least ten (10) business days prior to the expiration of such policy, a certificate showing that such insurance coverage has been renewed shall be obtained by Lessee and filed with Director.

In lieu of submitting a copy of the policy or policies evidencing the above insurance, Lessee may submit in a form reasonably acceptable to County a certificate of insurance.

Any insurance coverage may be issued in the form of a blanket policy insuring other properties, in form, amount and content reasonably satisfactory to County such that such coverage provides the same protection as required under this Article 9 as if the insurance had been procured on an individual property basis.

9.4 Additional Required Provisions. Lessee's insurance policies required by this Article 9 shall be for a term of not less than one year and shall additionally provide:

(a) that County and its respective Board of Supervisors and members thereof, and County's officers, agents, employees and volunteers, shall be named as additional insureds under any liability insurance policy or policies;

(b) that the full amount of any losses to the extent property insurance proceeds are available shall be payable to additional insureds notwithstanding any act, omission or negligence of Lessee which might otherwise result in forfeiture of such insurance;

(c) in any property insurance policy, a waiver of all right of subrogation against County and its respective Board of Supervisors and members thereof, and



County's officers, agents, employees and volunteers with respect to losses payable under such policies;

(d) in any property insurance policy, that such policies shall not be invalidated should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies;

(e) to the extent of the indemnification obligations of Lessee in favor of any additional insureds, the property and commercial general liability insurance policies shall provide coverage on a primary and non-contributory basis with respect to such additional insureds, regardless of any other insurance or self-insurance that such additional insureds may elect to purchase or maintain;

(f) that losses, if any, shall be adjusted with and payable to Lessee, County and Encumbrance Holders, if any, pursuant to a standard mortgagee clause;

(g) that such policies shall not be suspended, voided, canceled, reduced in coverage or in limits or materially changed without at least thirty (30) days prior written notice to County and all Encumbrance Holders or ten (10) business days in case of cancellation for failure to pay the premium;

(h) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,

(i) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.5 Failure to Procure Insurance. If Lessee fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from County, in addition to the other rights and remedies provided hereunder, County may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by County shall be repaid by Lessee, with interest thereon at the Applicable Rate, to County within five (5) business days after Lessee's receipt of written demand therefor.

9.6 Adjustment to Amount of Liability Coverage. The amounts of liability insurance required under Subsections 9.1.1, 9.1.2, 9.1.3 and 9.1.7 shall be subject to adjustment as of each fifth (5th) anniversary of the Effective Date (each, an "**Insurance Renegotiation Date**"), consistent with the amounts of such liability insurance then being required by County under similar ground leases for comparable developments and uses in the Marina del Rey Small Craft Harbor, including any adjustments then being approved by County (if any), based on differences in size, scope, uses or risks between the Premises and such other developments. If County and Lessee cannot agree upon the amount of insurance by the sixtieth (60th) day preceding an Insurance Renegotiation Date, the matter shall be resolved by binding arbitration in accordance with Article 16. In no event shall the amounts of liability insurance be decreased as a result of



such renegotiation or arbitration. Following such renegotiation or arbitration, the parties shall execute an amendment to this Lease setting forth the renegotiated insurance provisions or the arbitration judgment, as appropriate.

9.7 Notification of Incidents, Claims or Suits. Lessee shall notify County of any accident or incident on or about the Premises which involves injury or property damage over Fifty Thousand Dollars (\$50,000) in the aggregate and pursuant to which a claim against Lessee and/or County is made or threatened. Such notification shall be made in writing within 72 hours after Lessee first becomes aware of the claim or threatened claim.

10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 Lessee's Maintenance and Repair Obligations. Lessee shall maintain the Premises, including paved or unpaved ground surfaces and Improvements thereon, in conformance with such reasonable rules and regulations regarding the use and occupancy of residential and anchorage projects in Marina del Rey (such as the Premises) as may be promulgated by County from time to time for general applicability on a non-discriminatory basis, as revised from time to time. Without limiting the foregoing, at Lessee's sole cost and expense, but subject to the terms and conditions of this Lease, Lessee shall keep and maintain the Premises and all equipment, Improvements or physical structures of any kind which may exist or be erected, installed or made on the Premises in good and substantial repair and condition, including without limitation capital improvements and structural and roof repairs and replacement, and shall make all necessary repairs and alterations and replacements thereto, except as otherwise provided in this Article 10 (except that during periods of construction of the Redevelopment Work or Alterations or reconstruction of damaged or destroyed Improvements, Lessee's obligations as to the areas of the Premises under construction shall be controlled by Article 5 of this Lease). Lessee shall undertake such repairs, alterations or replacements in compliance with Applicable Laws, or as reasonably required in writing by Director to Lessee incident to the provisions of this Article 10. Lessee shall maintain all Improvements on the Premises in a safe, clean, wholesome and sanitary condition, to the reasonable satisfaction of Director and in compliance with all Applicable Laws. Lessee shall, at its own cost and expense, install, maintain and replace landscaping between the streets abutting the Premises and the building footprints on the Premises as is reasonably necessary to create a pleasing development to the reasonable satisfaction of Director. Lessee specifically agrees to provide proper containers for trash and garbage which are screened from public view, to keep the Premises free and clear of rubbish and litter. County in its proprietary capacity shall have the right with reasonable notice to enter upon and inspect the Premises at any reasonable time for cleanliness, safety and compliance with this Section 10.1, as long as such entrance is not done in a manner which would unreasonably interfere with the operation of the Premises. Lessee's obligation to maintain and restore is absolute, and is not in any way dependent upon the existence or availability of insurance proceeds, except as otherwise provided in this Lease. Restoration shall take place in accordance with the provisions of Article 5 and all other provisions of this Lease.

10.2 Maintenance of Anchorage Improvements. Lessee shall at all times during the Term keep all Anchorage Improvements in good repair and condition in accordance with the requirements of the Minimum Standards (except that during periods of construction or Alterations of the Anchorage Improvements or reconstruction of damaged or destroyed Anchorage Improvements, Lessee's obligations as to the areas of the Premises under construction shall be



controlled by Article 5 of this Lease). During the Term Lessee shall also complete float repair and replacement on an as-needed basis. Any requirement for repair of the Anchorage Improvements due to a deficiency notice issued by the Department shall be accomplished with new materials and parts rather than patching or other like method. Such required replacement of deficiency-cited items with wholly new parts and materials shall, however, be limited to the specific item in disrepair and shall not connote a requirement, for maintenance purposes, that areas or items surrounding the deficient item be replaced with new materials and/or parts.

10.3 Water Quality Management Program. Lessee shall comply with all water quality management requirements imposed by the Coastal Commission in connection with the issuance of any Coastal Development Permit for the Redevelopment Work pertaining to the Anchorage Improvements; provided, however, that Lessee shall in all events comply at least with the water quality management requirements set forth in Exhibit F attached to this Lease. In addition, during the remaining Term of the Lease, Lessee shall remove floating debris from the water surrounding the Anchorage Improvements in accordance with a program and regular schedule reasonably acceptable to Director.

10.4 Maintenance Deficiencies. If County provides written notice to Lessee of a deficiency or other breach in the performance by Lessee of the maintenance and repair obligations of Lessee under Sections 10.1 through 10.3 above, then Lessee shall promptly commence the cure thereof and shall complete such cure within the time period for such cure set forth in the County's deficiency notice, which cure period shall not be less than thirty (30) days except if the deficiency pertains to a condition that is a threat to health or safety or otherwise constitutes an emergency situation, in which case County shall have the right to immediately require Lessee to take all appropriate steps to avoid damage or injury. If Lessee fails to cure any such deficiency within the cure period set forth in County's written deficiency notice (which cure period shall comply with the requirements of the immediately preceding sentence of this Section 10.4), then in addition to, and not in lieu of, any rights or remedies that County may have under Article 13 of this Lease for defaults not cured within the applicable notice and cure periods set forth therein, Lessee shall pay to County an amount equal to One Hundred Dollars (\$100) per day per item of deficiency for each day after such cure period that the deficiency item remains uncured. Notwithstanding the foregoing, if the nature of the deficiency is such that it is not capable of cure within the cure period specified in County's notice (for example, as a result of permitting requirements or construction material procurement delays beyond the control of Lessee), then as long as during the specified cure period Lessee commences the cure of the deficiency and thereafter continues the prosecution of the completion of such cure in a manner and with such diligence that will effectuate the cure in as short a period as reasonably possible, then the cure period specified in County's deficiency notice shall be extended for such additional time as necessary to complete the cure in as short a period as reasonably possible. For purposes of determining the number of items of deficiency set forth in a deficiency notice received from County, County shall reasonably identify the separate deficiencies so as not to unfairly increase the daily amount payable under this Section 10.4 by separating the work into unreasonably particularized items (e.g., the requirement to paint the exterior of a building shall not be split into individual deficiency items for the painting of each individual door, window or other component of such building). If in the reasonable and good faith business judgment of Lessee the deficiency notice was erroneously issued by County, then Lessee shall have the right to contest such deficiency notice by written notice to Director within five (5) business days after the date the deficiency notice is received by Lessee. If Lessee



files any such contest with Director, then Director shall exercise her or his reasonable discretion in considering Lessee's contest. If Lessee's contest is made on a reasonable and good faith basis, then, in cases that do not include health, safety or any emergency condition, the cure period for the deficiency notice shall be tolled during the period between the date Director receives written notice of such contest and continuing until Director notifies Lessee in writing that Director accepts or denies Lessee's contest. If Director denies Lessee's contest, Lessee may request arbitration pursuant to Article 16. The One Hundred Dollars (\$100) per diem amount set forth in this Section 10.4 shall be adjusted every three (3) years during the remaining Lease Term on each third (3rd) anniversary of the Effective Date to reflect any change in the Consumer Price Index over the three (3) year period immediately preceding each such adjustment. If Lessee fails to pay any amounts payable by Lessee under this Section 10.4 within fifteen (15) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.5 Option to Terminate for Uninsured Casualty. In the event of any damage to or destruction of the Premises or any Improvements located thereon, Lessee shall, except as otherwise expressly provided in this Section 10.5, promptly (taking into consideration the necessity of obtaining approvals and permits for such reconstruction) repair and/or restore such Improvements to their condition existing prior to the damage or destruction. Except as otherwise expressly provided in this Section 10.5, such obligation to repair and restore is absolute, and is in no way dependent upon the existence or availability of insurance proceeds. Repair and restoration of any damage or destruction shall take place in accordance with the provisions of Article 5. Notwithstanding the foregoing, Lessee shall have the option to terminate this Lease and be relieved of the obligation to restore the Improvements on the Premises where the damage or destruction to the Improvements renders the Improvements substantially unusable for their intended purpose and such damage or destruction resulted from a cause (a) not required to be insured against by this Lease or (b) for which coverage existed, but for which the insurer does not provide the insurance proceeds to Lessee due to the insurer's insolvency (the circumstances reference in clause (a) or (b), an "**Uninsured Loss**"), and where all of the following occur:

10.5.1 No more than one hundred (100) days following the Uninsured Loss, Lessee shall notify County of its election to terminate this Lease; to be effective, this notice must include both a copy of Lessee's notification to the Encumbrance Holder, if any, of Lessee's intention to exercise this option to terminate and Lessee's certification under penalty of perjury that Lessee has delivered or mailed such notification to the Encumbrance Holder in accordance with this Subsection 10.5.1. County shall be entitled to rely upon the foregoing notice and certification as conclusive evidence that Lessee has notified the Encumbrance Holder regarding Lessee's desire to terminate this Lease.

10.5.2 No more than sixty (60) days following the giving of the notice required by Subsection 10.5.1 or such longer time as may be reasonable under the circumstances, Lessee shall, at Lessee's expense: remove all debris and other rubble from the Premises; secure the Premises against trespassers; and, at County's election, remove all remaining Improvements on the Premises.

10.5.3 No more than sixty (60) days following the giving of the notice required under Subsection 10.5.1, Lessee delivers to County a quitclaim deed to the Premises in



recordable form, in form and content satisfactory to County and/or with such other documentation as may be reasonably requested by County or any title company on behalf of County, terminating Lessee's interest in the Premises and reconveying such interest to County free and clear of any and all Encumbrances and Subleases.

10.5.4 Within fifteen (15) days following County's receipt of the notice referred to in Subsection 10.5.1, County has not received both (a) written notice from any Encumbrance Holder objecting to such termination and (b) an agreement containing an effective assignment of Lessee's interest in this Lease to such Encumbrance Holder whereby such Encumbrance Holder expressly assumes and agrees to be bound by and perform all of Lessee's obligations under this Lease.

10.6 No Option to Terminate for Insured Casualty. Lessee shall have no option to terminate this Lease or otherwise be relieved of its obligation to restore the Improvements on the Premises where the damage or destruction results from a cause required to be insured against by this Lease.

10.7 No County Obligation to Make Repairs. County shall have no obligation whatsoever to make any repairs or perform any maintenance on the Premises, unless the need for such repair or maintenance is caused by County's gross negligence or willful misconduct.

10.8 Repairs Not Performed by Lessee. If Lessee fails to make any repairs or replacements as required, Director may notify Lessee of said failure in writing, and should Lessee fail to cure said failure and make repairs or replacements within a reasonable time as established by Director, County may make such repairs or replacements and the cost thereof, including, but not limited to, the cost of labor, overhead, materials and equipment, shall be charged against Lessee as provided in Section 13.5.

10.9 Other Repairs. Although having no obligation to do so, County may, at its own cost and at its sole discretion, perform or permit others to perform any necessary dredging, filling, grading or repair of water systems, sewer facilities, roads, or other County facilities on or about the Premises.

10.10 Notice of Damage. Lessee shall give prompt notice to County of any fire or damage affecting the Premises or the Improvements from any cause whatsoever.

10.11 Waiver of Civil Code Sections. The parties' rights shall be governed by this Lease in the event of damage or destruction. The parties hereby waive the provisions of California Civil Code Section 1932 and any other provisions of law which provide for contrary or additional rights.

11. ASSIGNMENT AND SUBLEASE.

11.1 Subleases.

11.1.1 Definition. The term "Sublease" shall mean any lease, license, permit, concession or other interest in the Premises (including, without limitation, the Improvements), or a right to use the Premises or a portion thereof, which is conveyed or



granted by Lessee to a third party, and which constitutes less than the unrestricted conveyance of the entire Lessee's interest under this Lease. "**Sublessee**" shall be the person or entity to whom such right to use is conveyed by a Sublease. A Sublease which grants or conveys to the Sublessee the right to possess or use all or substantially all of the Premises is sometimes referred to in this Lease as a "**Major Sublease**" and the Sublessee under such agreement is sometimes referred to in this Lease as a "**Major Sublessee**".

11.1.2 Approval Required. At least thirty (30) days prior to the proposed effective date of any Sublease that is not a Major Sublease or an Approved Apartment/Slip Lease (as defined below), or of any assignment or material amendment of such Sublease, Lessee shall submit a copy of such Sublease (or assignment or amendment thereof), to Director for approval, which approval shall not be unreasonably withheld or conditioned. To the extent practical, Director shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) days after receipt thereof. In no event, however, shall any such Sublease, amendment or assignment be made or become effective without the prior approval of Director. Each such Sublease shall specifically provide that the Sublessee shall comply with all of the terms, covenants, and conditions of this Lease applicable to the portion of the Premises subject to the Sublease.

Notwithstanding any contrary provision of this Article 11, Lessee shall not be required to obtain County's approval of any Sublease of an individual apartment or boat slip unit in the ordinary course (but not the master lease of multiple units) to a person or persons who will physically occupy the subleased unit, as long as such Sublease is in the form of the standard residential apartment lease or boat slip lease, as the case may be, hereafter submitted to and approved by County and the term of such Sublease does not exceed twelve (12) months (each, an "**Approved Apartment/Slip Lease**"). The terms and provisions of Sections 11.2 and 11.3 of this Lease shall not be applicable to Approved Apartment/Slip Leases. Upon request by County, Lessee shall furnish County with a current rent roll respecting the Approved Apartment/Slip Leases and a copy of all of such Approved Apartment/Slip Leases.

11.1.3 Major Sublease. Lessee shall enter into a Major Sublease only with a reputable owner or manager of comparable residential and anchorage facilities such as exist on the Premises. In light of the inherent detailed nature of a Major Sublease, Lessee shall deliver to County a copy of any proposed Major Sublease, or any sub-sublease or any other document pursuant to which an interest is proposed to be transferred in all or substantially all of the Premises, not less than forty-five (45) days prior to the proposed effective date of such proposed Major Sublease or other document, for County's review and approval pursuant to the procedures and requirements specified in Section 11.2.

11.2 Approval of Assignments and Major Subleases. Except as specifically provided above in this Article 11, Lessee shall not, without the prior written consent of County, which shall be based solely upon factors described in Exhibit C hereto, which is incorporated herein by this reference ("**Assignment Standards**"), either directly or indirectly give, assign, hypothecate, encumber, transfer, or grant control of this Lease or any interest, right, or privilege therein (excluding an Approved Apartment/Slip Lease, but including without limitation the right to manage or otherwise operate the Improvements located from time to time on the Premises), or



enter into a Major Sublease affecting the Premises, or license the use of all or substantially all of the Premises. Any Change of Ownership that is not an Excluded Transfer shall constitute an assignment of Lessee's interest under this Lease. In addition, for purposes of this provision, the following shall require the prior written consent of County to be effective: (1) the addition, removal or replacement of one or more general partners or managing members in a Lessee which is a limited partnership or limited liability entity, except (a) by death, insolvency, incapacity, resignation (except for a sole general partner, if any) or removal of a general partner or managing member and his replacement by a vote of the limited partners, the remaining general partners or remaining members, or (b) if any general partner or managing member owning more than fifty percent (50%) of the interests of the partnership or limited liability entity acquires the interest of another general partner or managing member owning fifteen percent (15%) or less of the interests in the partnership or limited liability entity; or (2) the sale, assignment, or transfer of fifty-percent (50%) or more of the stock, partnership interests or limited liability company interests in an entity which owns, or is a general partner or managing member of an entity which owns, an interest in this Lease. Lessee shall provide County with any information reasonably requested by County in order to determine whether or not to grant approval of the matters provided herein requiring County's consent based upon the Assignment Standards. These same limitations and approval requirements as to Lessee's interest under the Lease shall also apply with respect to the Sublessee's interest under a Major Sublease.

11.2.1 County's Use of Discretion and Limitation on Permissible Assignees.

In exercising its discretion to approve assignments as provided in this Section 11.2, County shall take into account only the Assignment Standards and, if County determines that such Assignment Standards are satisfied, County shall not unreasonably withhold, condition or delay its consent to any proposed assignment. If County withholds its consent to an assignment, County shall notify Lessee in writing of the reason or reasons for such disapproval.

11.2.2 Involuntary Transfers Prohibited. Except as otherwise specifically provided in this Lease, neither this Lease nor any interest therein shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, or by any process of law including proceedings under the Bankruptcy Act.

11.2.3 Procedure. Requests for approval of any proposed assignment shall be processed in accordance with the following procedures:

11.2.3.1 Prior to entering into any agreement requiring the approval of County pursuant to this Sections 11.1 or 11.2, Lessee (or the entity seeking approval of such assignment) shall notify County and deliver to County all information reasonably relevant to the proposed assignment, including without limitation any term sheets, letters of intent, draft Major Subleases, any other documents which set forth any proposed agreement regarding the Premises and the information set forth in Subsection 11.2.3.5. County will evaluate the information provided to it and County may request additional information as may be reasonably necessary to act on the request. Under no circumstances will County discuss an assignment with any



proposed assignee without providing Lessee the right to be present at any such discussion.

11.2.3.2 In completing its review of the proposal and granting or withholding its consent thereto, County will not be bound by any deadline contained in any proposed assignments, Major Subleases, escrow instructions or other agreements to which County is not a party.

11.2.3.3 Lessee acknowledges that the time needed for County to review a proposed assignment depends on many factors, including without limitation the complexity of the proposed transaction, the financial and other information submitted for review, and the workload of County's personnel. Notwithstanding the foregoing, County shall act as promptly as governmental processes permit in processing and acting upon a requested approval of an assignment of Lessee's interest under this Article 11.

11.2.3.4 Lessee shall be required to reimburse County for its Actual Costs incurred in connection with the proposed assignment, whether or not County ultimately grants its approval to the proposed assignment. (without any duplication with any Administrative Charge payable under Section 4.6).

11.2.3.5 Lessee or the proposed assignee shall provide County with sufficient information for County to determine if the public interest will be served by approving the proposed transaction. The information that must be provided includes, but shall not be limited to, the following:

(a) Nature of the Assignee. Full disclosure is required in accordance with this Lease and County's applicant disclosure policy then in effect. Additionally, a flowchart identifying the chain of ownership of the assignee and its decision-making authority shall be provided to County. County shall be advised if the proposed assignee, or any other person or entity for whom disclosure is required pursuant to County's disclosure policy, has had any leasehold or concessionaire's interest canceled or terminated by the landlord due to the tenant or Lessee's breach or default thereunder.

(b) Financial Condition of Assignee. County shall be provided with current, certified financial statements, including balance sheets and profit and loss statements, demonstrating the proposed assignee's financial condition for the preceding five (5) years, or such shorter period that assignee has been in existence. This requirement shall also apply to any related person or entity which will be responsible for or guarantee the obligations of the proposed assignee or provide any funds or credit to such proposed assignee.

(c) Financial Analysis. County shall be provided with the proposed assignee's financing plan for the operation of the Premises and for any contemplated improvement thereof, demonstrating such proposed assignee's financial capability to so operate the Premises and construct such improvements. Such financing plan shall include, but not be limited to, information detailing (1) equity capital; (2) sources and



uses of funds; (3) terms of financing; (4) debt service coverage and ratio; and (5) loan to value ratio. The proposed assignee shall also provide County with documentation demonstrating such proposed assignee's financial viability, such as letters of commitment from financial institutions which demonstrate the availability of sufficient funds to complete any proposed construction or improvements on the Premises. Further, such proposed assignee shall authorize the release of financial information to County from financial institutions relating to the proposed assignee or other information supplied in support of the proposed assignment.

(d) Business Plan. County shall be provided with the proposed assignee's business plan for the Premises, if applicable, including pro forma financial projections for the Premises for the five (5) year period beginning upon the commencement of the proposed assignment. Such pro forma projections will include capital costs, income and expenses, as well as debt service and all other payments to providers of debt and equity, and will be accompanied by a statement of basic assumptions and an identification of the sources of the data used in the production of such projections.

(e) Assignor's Financial Statements. County shall be provided with certified financial statements, including balance sheets and profits and loss statements concerning the assignor Lessee and its operations for the three (3) most recent years prior to the proposed transaction.

(f) Cure of Defaults. County shall be provided with the proposed assignee's specific plans to cure any and all delinquencies under this Lease which may be identified by County, whether identified before or after the date of the proposed assignment.

(g) Prospectus Materials. County shall be provided with any materials distributed to third parties relating to the business of the proposed assignee to be conducted on, from or relating to the Premises.

(h) Other Information. County shall be provided with a clear description of the terms and conditions of the proposed assignment, including a description of the proposed use of the Premises and any proposed alterations or improvements to the Premises. Additionally, County shall be provided with any and all other non-confidential information which it reasonably requests of Lessee in connection with its review of the proposed transaction, including without limitation materials pertinent to the issues noted in this Subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Premises, contracts in excess of \$25,000 affecting the Premises, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the Premises. County shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act and other Applicable Laws.

11.2.3.6 Nondisturbance. At the request of Lessee, County shall agree to execute a subordination, nondisturbance and attornment agreement on commercially reasonable terms in favor of any Major Sublessee.



11.2.3.7 Final Documents. Prior to granting its approval over any proposed assignment, County shall be provided with an executed Assignment and Acceptance of Assignment in form and content as reasonably approved or supplied by County. Ten (10) copies of each must be submitted to County, of which five (5) shall be signed originals and properly acknowledged.

11.2.4 County Right to Recapture. If Lessee proposes to assign its interest in this Lease, proposes to enter into any Major Sublease affecting the Premises or proposes to transfer a Controlling Interest in Lessee (with any such proposed transaction herein referred to as a "**Proposed Transfer**"), it shall provide County with written notice of such desire, which notice shall include the sale price ("**Lessee Sale Price**") at which it is willing to consummate the Proposed Transfer. For purposes hereof, a "**Controlling Interest**" in Lessee shall mean seventy five percent (75%) or more of the direct or indirect beneficial ownership of the capital and profits interests in Lessee. Within thirty (30) days thereafter, County shall provide Lessee with written notification as to whether it has elected to acquire an option to purchase the interest subject to the Proposed Transfer. During said thirty (30) day period, Lessee may market the interest subject to the Proposed Transfer, provided that such interest is offered subject to County's rights as provided in this Subsection 11.2.4. In the event that, prior to the expiration of said thirty (30) day period, County has given notice to Lessee that it has elected to acquire said option, Lessee shall deliver to County an assignable option to purchase the interest subject to the Proposed Transfer ("**County Option**") at the Lessee Sale Price. Such County Option shall have a term of five (5) calendar months. During the term of the County Option, Lessee shall make the Premises and its books and records reasonably available for inspection by County and third parties as reasonably requested by County. At Lessee's request, any third party granted access to the Premises or Lessee's books and records pursuant to this Subsection 11.2.4 shall be required to execute a right-of-entry and confidentiality agreement on commercially reasonable terms. In the event that County causes Lessee to issue the County Option and subsequently declines to purchase the interest subject to the Proposed Transfer at the Lessee Sale Price, County shall pay to Lessee at the expiration of the County Option period (or, at County's election, credit to Lessee against the next applicable installment(s) of Annual Minimum Rent and Percentage Rent), a sum (the "**County Option Price**") which represents (i) three percent (3%) of the Lessee Sale Price, plus (ii) seven percent (7%) interest per annum on said three percent (3%) of the Lessee Sale Price, from the date Lessee received notice of County's election to receive the County Option through the date on which the County Option Price, together with interest thereon, is paid or credited in full. If County either (a) fails to elect to cause Lessee to issue the County Option within said thirty (30) day period, or (b) gives notice that it has elected not to acquire the interest subject to the Proposed Transfer, then during the nine (9) month period following the later of (a) or (b), Lessee shall be entitled to enter into an agreement to consummate the Proposed Transfer with a third party (subject to County's approval rights as otherwise set forth in this Lease) so long as (1) the actual price for the Proposed Transfer is equal to or greater than the Lessee Sale Price last offered to County and upon no more favorable material terms to the assignee and (2) the transfer is consummated not later than twelve (12) months after the later of (a) or (b) (which twelve (12) month period shall be extended to the extent the closing is delayed due to a delay by County in approving the transaction within sixty (60)



days after County has received a notice from Lessee requesting County's approval of such transaction and all information required by County under this Lease to permit County to evaluate the transaction). In the event of a proposed Major Sublease, County's election shall pertain to such portion of the Premises subject to the proposed Major Sublease or assignment and, in the event that County elects to acquire such portion of Lessee's interest in the Premises, Lessee's Annual Minimum Rent shall be proportionally reduced and Lessee's obligation to pay Percentage Rent shall pertain only to the amounts derived from the portion of the Premises retained by Lessee. In the event that County elects to recapture all or any portion of the Premises as provided herein, Lessee agrees to execute promptly a termination agreement and such other documentation as may be reasonably necessary to evidence the termination of this Lease, to set a termination date and to prorate rent and other charges with respect to the termination. County's rights pursuant to this subsection 11.2.4 shall not apply to (I) Financing Events, or (II) those events identified in subsection 4.6.2 of this Lease.

11.2.5 County Credits Toward Purchase Price. In the event that County or its assignee elects to exercise the County Option, it shall receive the following credits toward the Lessee Sale Price: (1) the Net Proceeds Share which would be payable to County in the event that a third party were to purchase the interest offered at the Lessee Sale Price and (2) an amount which represents unpaid Annual Minimum Rent, Percentage Rent, and all other amounts payable under the Lease, if any (including a provisional credit in an amount reasonably acceptable to County for any amounts that may arise from an audit by County, but that have not yet been determined as of that date), with late fees and interest as provided herein, from the end of the period most recently subject to County audit through the date of the purchase of the interest by County. In the case of any unpaid rental amounts that may be found to be owing to County in connection with any uncompleted audit by County, in lieu of a provisional credit for such amounts, Lessee may provide County with a letter of credit or other security satisfactory to County to secure the payment of such unpaid amounts when finally determined by County. During the term of the County Option, Lessee shall cause to be available to County all books and records reasonably necessary in order to determine the amount of such unpaid Annual Minimum Rent, Percentage Rent, and other amounts payable under the Lease. In the event that County or its assignee exercises the County Option, but the transaction fails to close due to a failure of the parties to agree upon an appropriate allowance for such unpaid Annual Minimum Rent, Percentage Rent, and other amounts or appropriate security for the payment thereof, then County shall have no obligation to pay or credit to Lessee the County Option Price.

11.3 Terms Binding Upon Successors, Assigns and Sublessees. Except as otherwise specifically provided for herein, each and all of the provisions, agreements, terms, covenants, and conditions herein contained to be performed, fulfilled, observed, and kept by Lessee hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of its heirs, executors, administrators, successors, and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Any approved assignment of this Lease shall release the assignor of all liability arising due to actions or omissions on or after the



effective date of such assignment, provided the assignee assumes all of such liability, including without limitation the obligation of assignee to cure any defaults and delinquencies under this Lease and to pay County Percentage Rent and any other amounts attributable to the period prior to the assignment, but not discovered by County or the assignee until after the assignment; provided, further, the assignor shall not be relieved of any liability for the payment of the Administrative Charge or the required portion of any Net Proceeds Share or Net Refinancing Proceeds which arise upon such assignment as provided herein.

12. ENCUMBRANCES.

12.1 Financing Events. Lessee may, with the prior written consent of Director, which shall not be unreasonably withheld, and subject to any specific conditions which may be reasonably imposed by Director, consummate one or more Financing Event(s) (as defined below). Lessee shall submit to Director a complete set of all proposed transaction documents in connection with each proposed Financing Event. Lessee shall submit to Director a preliminary loan package and thereafter a complete set of all proposed transaction documents in connection with each proposed Financing Event. The preliminary loan package shall include the loan commitment (or the so-called "loan application" if the loan commitment is styled as a loan application) and any other documents, materials or other information reasonably requested by Director. Lessee shall have the right, but not the obligation, to include draft loan documents in the preliminary loan package. Director shall have sixty (60) days (thirty (30) days for the initial construction loan for the Redevelopment Work) to grant or withhold approval of the preliminary loan package. Director shall have sixty (60) days (thirty (30) days for the initial construction loan for the Redevelopment Work) after receipt of substantially complete loan documents conforming to the approved preliminary loan package in which to grant or withhold final approval of the Financing Event; provided, however, that if the preliminary loan package included draft loan documents then the foregoing sixty (60) day period shall be reduced to thirty (30) days. If not approved by Director in writing within the foregoing periods, the proposed Financing Event shall be deemed disapproved by Director (and, if so requested in writing by Lessee), Director shall within thirty (30) days of such request deliver to Lessee a written description of Director's objections to said proposed Financing Event). Lessee shall further reimburse County for County's Actual Cost incurred in connection with its review of the proposed Financing Event, including without limitation the costs of in-house counsel, outside counsel and third party consultants. For the purposes of this Lease, including without limitation the provisions of Sections 4.6 through 4.8 hereof, a "**Financing Event**" shall mean any financing or refinancing consummated by Lessee, whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance (as defined below).

12.1.1 Encumbrances. As used in this Lease, an "**Encumbrance**" shall be any direct or indirect grant, assignment, transfer, mortgage, hypothecation, grant of control over, or encumbrance of all or any portion of Lessee's interest under this Lease and the estate so created, including without limitation a direct or indirect assignment of Lessee's right to receive rents from Sublessees, and a pledge of partnership interests or other beneficial ownership interests in Lessee by the principals of Lessee, to a lender (upon County approval of the Encumbrance and consummation of the lending transaction, the "**Encumbrance Holder**") on the security of Lessee's interest in the Lease and the Premises, the shares or interests of beneficial ownership in Lessee, or otherwise secured



by Lessee's rights in and to the Premises. One (1) copy of any and all security devices or instruments as finally executed or recorded by the parties in connection with any approved Encumbrance shall be filed with Director not later than seven (7) days after the effective date thereof. These same limitations and approval requirements shall apply with respect to the financing and the Encumbrance Holder of any Major Sublessee's interest pursuant to a Major Sublease.

12.1.2 Consent Not Required to Transfer Resulting from Foreclosure. The written consent of County shall not be required in the case of:

12.1.2.1 A transfer of this Lease or a Major Sublease at a foreclosure sale or at a judicial foreclosure or voluntary conveyance to the Encumbrance Holder or an affiliate in lieu thereof; or

12.1.2.2 A single subsequent transfer of the Lease or a Major Sublease by an Encumbrance Holder who was a purchaser at such foreclosure sale or transfer in lieu thereof, provided the transferee expressly agrees in writing to assume and to perform all of the obligations under this Lease and, if applicable, a Major Sublease.

12.1.3 Effect of Foreclosure. In the event of a transfer under Subsection 12.1.2, the Encumbrance Holder shall forthwith give notice to County in writing of any such transfer setting forth the name and address of the transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

12.1.3.1 Any transferee under the provisions of Subsection 12.1.2.1 which is a commercial bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust or other similar financial institution which ordinarily engages in the business of making loans secured by collateral similar to the Premises, or an affiliate thereof ("**Institutional Lender**"), shall be liable to perform the full obligations of Lessee under this Lease arising under the Lease from the date of transfer under Subsection 12.1.1.1 until a subsequent transfer of the Lease approved by County.

12.1.3.2 A transferee under Subsection 12.1.2.1 which is not an Institutional Lender and any subsequent transferee under the provisions of Subsection 12.1.2.2 shall be liable to perform the full obligations of Lessee under this Lease and as a condition to the completion of such transfer must cure, remedy, or correct any Event of Default existing at the time of such transfer or arising thereafter due to an event or occurrence before date of transfer.

12.1.3.3 Neither an Administrative Charge nor any Net Proceeds Share shall be payable in respect of or charged against any amount payable under the Encumbrance to or for the benefit of the Encumbrance Holder in connection with a transfer pursuant to Subsection 12.1.2.

12.2 Right to Notice and Cure Defaults. All Encumbrance Holders and Major Sublessees shall have the right, at any time during the term of its Encumbrance or Major Sublease, as applicable, but prior to the termination of this Lease, and as further provided in Section 12.4, to



do any act or thing required of Lessee in order to prevent termination of Lessee's rights hereunder, and all such acts or things so done hereunder shall be treated by County the same as if performed by Lessee.

12.3 No Subordination. County's rights in the Premises and this Lease, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with Section 12.1, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder, other than any pre-existing Event of Default that (a) is an incurable non-monetary default, (b) is a non-monetary default that can only be cured by a prior lessee, (c) is a non-monetary default that is not reasonably susceptible of being cured by such transferee, or (d) relates to any obligation of a prior lessee to pay any Net Proceeds Share (collectively, "**Excluded Defaults**").

12.4 Delay in Exercising Termination Remedy. County shall not exercise any remedy available to it upon the occurrence of an Event of Default (other than pursuant to Section 13.5), unless it first shall have given written notice of such default to each and every Major Sublessee and Encumbrance Holder, where the Encumbrance Holder and/or Major Sublessee have notified Director in writing of its interest in the Premises or this Lease and the addresses to which such notice should be delivered. Such notice shall be sent simultaneously with the notice or notices to Lessee. An Encumbrance Holder or Major Sublessee shall have the right and the power to cure the Event of Default specified in such notice in the manner prescribed below. If such Event or Events of Default are so cured, this Lease shall remain in full force and effect.

12.4.1 Manner of Curing Default. Events of Default may be cured by an Encumbrance Holder or Major Sublessee in the following manner:

(1) If the Event of Default is in the payment of rental, taxes, insurance premiums, utility charges or any other sum of money, an Encumbrance Holder or the Major Sublessee may pay the same, together with any Late Fee or interest payable thereon, to County or other payee within thirty five (35) days after mailing of the aforesaid notice of default to the Encumbrance Holder or the Major Sublessee. If, after such payment to County, Lessee pays the same or any part thereof to County, County shall refund said payment (or portion thereof) to such Encumbrance Holder or Major Sublessee.

(2) If the Event of Default cannot be cured by the payment of money, but is otherwise curable, the default may be cured by an Encumbrance Holder or Major Sublessee as follows:

(a) If an Encumbrance Holder or Major Sublessee cures, remedies and corrects the default within sixty (60) days after the end of Lessee's cure



period as provided in Section 13.1 hereof (except that if the default involves health, safety or sanitation issues, County may by written notice reduce such sixty (60) day period to thirty (30) days, such 60 or 30 day period, as applicable, being referred to herein as the “initial cure period”); provided, however, if curing of such default reasonably requires activity over a longer period of time, such default may be cured if within said initial cure period, such Encumbrance Holder or Major Sublessee commences and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default; in the event Lessee commences to cure the default within Lessee’s applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Encumbrance Holder’s and Major Sublessee’s initial cure period shall commence upon the later of the end of Lessee’s cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Lessee has failed or ceased to cure the default with due diligence.

(b) With respect to an Encumbrance Holder, but not a Major Sublessee, if before the expiration of the initial cure period said Encumbrance Holder notifies County of its intent to commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, said sixty (60) day period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing foreclosure proceedings by any order, judgment or decree of any court or regulatory body with jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such order, judgment or decree, the initial cure period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty-five (35) days after a Foreclosure Transfer is completed, the Foreclosure Transferee shall (if such default has not been cured) commence to cure, remedy or correct the default and thereafter diligently pursue such cure until completed in the same manner as provided in paragraph (a) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, and the extension of any relevant cure period shall lapse, in the event of a cure by Lessee.

12.5 New Lease.

12.5.1 Obligation to Enter Into New Lease. In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Lease otherwise terminates for any reason, County shall, upon the written request of any Encumbrance Holder with respect to Lessee’s entire leasehold estate under this Lease or all of the ownership interests in Lessee (according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof



for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify the most junior Encumbrance Holder of a termination described in this Section 12.5 within thirty (30) days after the occurrence of such termination, which notice shall state (i) that the Lease has terminated in accordance with Section 12.5 of this Lease, and (ii) that such Encumbrance Holder has sixty (60) days following receipt of such notice within which to exercise its right to a new lease under this Section 12.5, or else it will lose such right. An Encumbrance Holder's election shall be made by giving County written notice of such election within sixty (60) days after such Encumbrance Holder has received the above-described written notice from the County. Within a reasonable period after request therefor, County shall execute and return to the Encumbrance Holder any and all documents reasonably necessary to secure or evidence the Encumbrance Holder's interest in the new lease or the Premises. From and after the effective date of the new lease, the Encumbrance Holder (or its affiliate) shall have the same rights to a single transfer that are provided in subsection 12.1.2.2 above, and shall enjoy all of the other rights and protections that are provided to a Foreclosure Transferee in this Article 12. Any other subsequent transfer or assignment of such new lease shall be subject to all of the requirements of Article 11 of this Lease. If there are multiple Encumbrance Holders, this right shall inure to the most junior Encumbrance Holder in order of priority; provided, however, if such junior Encumbrance Holder shall accept the new lease, the priority of each of the more senior Encumbrance Holders shall be restored in accordance with all terms and conditions of such Encumbrances(s). If a junior Encumbrance Holder does not elect to accept the new lease within thirty (30) days of receipt of notice from County, the right to enter into a new lease shall be provided to the next most junior Encumbrance Holder, under the terms and conditions described herein, until an Encumbrance Holder either elects to accept a new lease, or no Encumbrance Holder so elects.

12.5.2 Priority of New Lease. The new lease made pursuant to this Section 12.5 shall be prior to any mortgage or other lien, charge or encumbrance on County's fee interest in the Premises, and any future fee mortgagee or other future holder of any lien on the fee interest in the Premises is hereby given notice of the provisions hereof.

12.6 Holding of Funds. Any Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the ownership interests in Lessee that is an Institutional Lender shall have the right to hold and control the disbursement of (i) any insurance or condemnation proceeds to which Lessee is entitled under this Lease and that are required by the terms of this Lease to be applied to restoration of the Improvements on the Premises (provided that such funds shall be used for such restoration in accordance with the requirements of the Lease), and (ii) any funds required to be held in the Subsequent Renovation Fund and Capital Improvement Fund (provided that such funds shall be used for the purposes required by this Lease). If more than one such Encumbrance Holder desires to exercise the foregoing right, the most senior Encumbrance Holder shall have priority in the exercise of such right.



12.7 Participation in Certain Proceedings and Decisions. Any Encumbrance Holder shall have the right to intervene and become a party in any arbitration, litigation, condemnation or other proceeding affecting this Lease. Lessee's right to make any election or decision under this Lease with respect to any condemnation settlement, insurance settlement or restoration of the Premises following a casualty or condemnation shall be subject to the prior written approval of each then existing Encumbrance Holder.

12.8 Fee Mortgages and Encumbrances. Any mortgage, deed of trust or other similar encumbrance granted by County upon its fee interest in the Premises shall be subject and subordinate to all of the provisions of this Lease and to all Encumbrances. County shall require each such fee encumbrance holder to confirm the same in writing (in a form reasonably approved by each Encumbrance Holder or its title insurer) as a condition to granting such encumbrance, although the foregoing subordination shall be automatic and self-executing whether or not such written confirmation is obtained.

12.9 No Merger. Without the written consent of each Encumbrance Holder, the leasehold interest created by this Lease shall not merge with the fee interest in all or any portion of the Premises, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

13. DEFAULT.

13.1 Events of Default. The following are deemed to be "Events of Default" hereunder:

13.1.1 Monetary Defaults. The failure of Lessee to pay the rentals due, or make any other monetary payments required under this Lease (including, without limitation, deposits to the Subsequent Renovation Fund and/or Capital Improvement Fund), within five (5) days after receipt of written notice that said payments are overdue. Lessee may cure such nonpayment by paying the amount overdue, with interest thereon and the applicable Late Fee, within such five (5) day period.

13.1.2 Failure to Comply with Construction Obligations. The failure of Lessee to comply with the obligations and timeframes set forth in Article 5 of this Lease (as such timeframes are extended pursuant to such Article 5, if at all) if not cured within thirty (30) days after written notice of such failure; provided, however, if a breach by Lessee of its obligations under Article 5, other than its obligation to complete the Redevelopment Work or a Subsequent Renovation by the applicable date set forth in Article 5, is curable but such cure is not reasonably susceptible of completion within the foregoing thirty (30) day period, then as long as Lessee in good faith commences the cure of such breach within such thirty (30) day period and continues to diligently pursue such cure to completion within a reasonable time, such breach shall not constitute an Event of Default.

13.1.3 Maintenance of Security Deposit. The failure of Lessee to maintain and/or replenish the Security Deposit required pursuant to Article 7 of this Lease if not cured within ten (10) days after written notice of such failure.



13.1.4 Failure to Perform Other Obligations. The failure of Lessee to keep, perform, and observe any and all other promises, covenants, conditions and agreements set forth in this Lease, including without limitation the obligation to maintain adequate accounting and financial records, within thirty five (35) days after written notice of Lessee's failure to perform from Director; provided, however, that where Lessee's performance of such covenant, condition or agreement is not reasonably susceptible of completion within such thirty five (35) day period and Lessee has in good faith commenced and is continuing to perform the acts necessary to perform such covenant, condition or agreement within such thirty five (35) day period, County will not exercise any remedy available to it hereunder for so long as Lessee uses reasonable due diligence in continuing to pursue to completion the performance such covenant, condition or agreement and so completes performance within a reasonable time.

13.1.5 Non-Use of Premises. The abandonment, vacation, or discontinuance of use of the Premises, or any substantial portion thereof, for a period of thirty five (35) days, except when prevented by Force Majeure or when closed for renovations or repairs required or permitted to be made under this Lease.

Any notice required to be given by County pursuant to Subsections 13.1.1 through and including 13.1.4 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

13.2 Limitation on Events of Default. Except with respect to breaches or defaults with respect to the payment of money, Lessee shall not be considered in default as to any provision of this Lease (and no late fees or interest will be incurred) to the extent such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body with jurisdiction, or any other circumstances which are physically or legally impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

13.3 Remedies. Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 12.4 hereof, County shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

13.3.1 Terminate Lease. County may terminate this Lease by giving Lessee written notice of termination. On the giving of the notice, all of Lessee's rights in the Premises and in all Improvements shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises and all Improvements in broom-clean condition, and County may re-enter and take possession of the Premises and all remaining Improvements and, except as otherwise specifically provided in this Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this Subsection shall not relieve Lessee from the payment of any sum then due to County or from any claim for damages against Lessee as set forth in Subsection 13.4.3, or from Lessee's obligation to remove Improvements at County's election in accordance with Article 2. County agrees to use reasonable efforts to mitigate damages. The terms and provisions of this Subsection 13.3.1 are subject to Article 12 of this Lease.



13.3.2 Keep Lease in Effect. Without terminating this Lease, so long as County does not deprive Lessee of legal possession of the Premises and allows Lessee to assign or sublet subject only to County's rights set forth herein, County may continue this Lease in effect and bring suit from time to time for rent and other sums due, and for Lessee's breach of other covenants and agreements herein. No act by or on behalf of County under this provision shall constitute a termination of this Lease unless County gives Lessee written notice of termination. It is the intention of the parties to incorporate the provisions of California Civil Code Section 1951.4 by means of this provision.

13.3.3 Termination Following Continuance. Even though it may have kept this Lease in effect pursuant to Subsection 13.3.2, thereafter County may elect to terminate this Lease and all of Lessee's rights in or to the Premises unless prior to such termination Lessee shall have cured the Event of Default or shall have satisfied the provisions of Section 13.2, hereof. County agrees to use reasonable efforts to mitigate damages.

13.4 Damages. Should County elect to terminate this Lease under the provisions of the foregoing Section, County shall be entitled to recover from Lessee as damages:

13.4.1 Unpaid Rent. The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease;

13.4.2 Post-Termination Rent. The worth, at the time of the award, of the unpaid rent that would have been earned under this Lease after the date of termination of this Lease until the date Lessee surrenders possession of the Premises to County; and

13.4.3 Other Amounts. The amounts necessary to compensate County for the sums and other obligations which under the terms of this Lease become due prior to, upon or as a result of the expiration of the Term or sooner termination of this Lease, including without limitation, those amounts of unpaid taxes, insurance premiums and utilities for the time preceding surrender of possession, the cost of removal of rubble, debris and other above-ground Improvements, attorney's fees, court costs, and unpaid Administrative Charges, Net Proceeds Shares and Net Refinancing Proceeds.

13.5 Others' Right to Cure Lessee's Default. County (and any Encumbrance Holder or Major Sublessee, as provided in the last sentence of this section), at any time after Lessee's failure to perform any covenant, condition or agreement contained herein beyond any applicable notice and cure period, may cure such failure at Lessee's cost and expense. If, after delivering to Lessee two (2) or more written notices with respect to any such default, County at any time, by reason of Lessee's continuing failure, pays or expends any sum, Lessee shall immediately pay to County the lesser of the following amounts: (1) twice the amount expended by County to cure such default and (2) the amount expended by County to cure such default, plus one thousand dollars (\$1,000). To the extent practicable, County shall give any Encumbrance Holders or Major Sublessees the reasonable opportunity to cure Lessee's default prior to County's expenditure of any amounts thereon.

13.6 Default by County. County shall be in default in the performance of any obligation required to be performed by County under this Lease if County has failed to perform such



obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days notice to any person having a recorded interest pertaining to County's interest in this Lease or the Premises. Such person shall then have the right to cure such default, and County shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this Lease, County's liability to Lessee for damages arising out of or in connection with County's breach of any provision or provisions of this Lease shall not exceed the value of County's equity interest in the Premises and its right to insurance proceeds in connection with the policies required under Article 9 hereof.

14. ACCOUNTING.

14.1 Maintenance of Records and Accounting Method. In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease, Lessee and all Sublessees shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Director, true, accurate, and complete records and double-entry books of account for the current and five (5) prior Lease Years (or with respect to NF Marina LP as Lessee, for the period of NF Marina LP's ownership of the leasehold in the Premises (whether pursuant to the Existing Lease or this Lease) plus any remaining period up to the foregoing aggregate five (5) Lease Year requirement to the extent NF Marina LP has in its possession copies of the predecessor lessee's records and books of account), such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Premises separate and apart from those in connection with Lessee's (or a Sublessee's, as applicable) other business operations, if any. Lessee shall utilize the accrual method of accounting with respect to the preparation of the reports, statements and maintenance of records required under this Lease (including without limitation, with respect to the calculation of Gross Receipts).

14.2 Cash Registers. To the extent retail sales are conducted on the Premises, or other cash or credit sales of goods or services are conducted, all such sales shall be recorded by means of cash registers or computers which automatically issue a customer's receipt or certify the amount recorded in a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape (or other equivalent security mechanism) located within the register on which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record.

Lessee shall cause to be implemented point of sale systems which can accurately verify all sales for audit purposes and customer review purposes, which system shall be submitted to Director in advance of installation for his approval, which approval shall not be unreasonably withheld, conditioned or delayed.



Lessee's obligations set forth in this Section 14.2 include Lessee's obligation to insure that Lessee's Sublessees (including licensees, permittees, concessionaires and any other occupants of any portion of the Premises) keep records sufficient to permit County and County's auditors to determine the proper levels of Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease, and to verify the amount and use of the Permitted Capital Expenditures.

14.3 Statement; Payment. No later than the fifteenth (15th) day of each calendar month, Lessee shall render to County a detailed statement showing Gross Receipts during the preceding calendar month, together with its calculation of the amount payable to County under Sections 4.2 through 4.8 inclusive, and shall accompany same with remittance of amount so shown to be due.

14.4 Availability of Records for Inspector's Audit. Books of account and records hereinabove required shall be kept or made available at the Premises or at another location within Los Angeles County, and County and other governmental authorities shall have the right at any reasonable times to examine and audit said books and records, without restriction, for the purpose of determining the accuracy thereof and of the monthly statements of Gross Receipts derived from occupancy of the Premises and the compliance of Lessee with the terms of this Lease and other governmental requirements. This Section 14.4 shall survive the expiration of the Term or other termination of this Lease for thirty six (36) months after such expiration or termination.

14.4.1 Entry by County. Upon at least two (2) business days' advance notice, County and its duly authorized representatives or agents may enter upon the Premises at any and all reasonable times during the Term of this Lease for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of County.

14.5 Cost of Audit. In the event that, for any reason, Lessee does not make available its (or its Sublessee's) original records and books of account at the Premises or at a location within Los Angeles County, Lessee agrees to pay all expenses incurred by County in conducting any audit at the location where said records and books of account are maintained. In the event that any audit discloses a discrepancy in County's favor of greater than two percent (2%) of the revenue due County for the period audited, then Lessee shall pay County audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.5.

14.6 Annual Financial Statements. Within six (6) months after the end of each Lease Year, Lessee shall deliver to County a statement of Gross Receipts for such year (including a breakdown by Percentage Rent category) and the amount of any Permitted Capital Expenditures in such year, certified by a Certified Public Accountant who is a member of the American Institute of Certified Public Accounts and is satisfactory to County. All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Premises, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Premises. In the event that it is determined that Lessee has overpaid County, Lessee may deduct the amount from subsequent rent payments until the full amount of such overpayment has been repaid, or if the Term expires prior to Lessee having been fully repaid,



County shall refund the remaining balance to Lessee within thirty (30) days after the end of the Term and the completion of all audits.

14.7 Accounting Obligations of Sublessees. Lessee shall cause all Sublessees (including licensees, concessionaires and others conducting business operations on or from the Premises, but excluding Sublessees under Approved Apartment/Slip Subleases that occupy their premises primarily for residential purposes and not for the operation of business) to comply with all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records.

14.8 Inadequacy of Records. In the event that Lessee or its Sublessees (including licensees or concessionaires) fail to keep the records required by this Article 14 such that a Certified Public Accountant is unable to issue an unqualified opinion as to Gross Receipts, such failure shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Premises, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in Marina del Rey with comparable business operations, or any other method as determined by Director and shall utilize such methodology as Director deems reasonable. Within fifteen (15) days after receipt of County's reasonable determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due.

15. MISCELLANEOUS.

15.1 Quiet Enjoyment. Lessee, upon performing its obligations hereunder, shall have the quiet and undisturbed possession of the Premises throughout the Term of this Lease, subject, however, to the terms and conditions of this Lease.

15.2 Time is of the Essence. Except as specifically otherwise provided for in this Lease, time is of the essence of this Lease and applies to all times, restrictions, conditions, and limitations contained herein.

15.3 County Costs. Lessee shall promptly reimburse County for the Actual Costs incurred by County in the review, negotiation, preparation and documentation of this Lease and the term sheets and memoranda that preceded it.

15.4 County Disclosure and Lessee's Waiver.

15.4.1 Disclosures and Waiver.

15.4.1.1 "AS IS". Lessee acknowledges that it is currently in possession of the Premises and that Lessee or its predecessor-in-interest has continuously occupied and/or managed and operated the Premises since 1961. Lessee accepts the



Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the execution of this Lease by Lessee and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS".

15.4.1.2 Lessee acknowledges that it may incur additional engineering and construction costs above and beyond those contemplated by either party to this Lease at the time of the execution hereof and Lessee agrees that, it will make no demands upon County for any construction, alterations, or any kind of labor that may be necessitated in connection therewith.

15.4.1.3 Lessee hereby waives, withdraws, releases, and relinquishes any and all claims, suits, causes of action (other than a right to terminate as otherwise provided in this Lease), rights of rescission, or charges against County, its officers, agents, employees or volunteers which Lessee now has or may have or asserts in the future which are based upon any defects in the physical condition of the Premises and the soil thereon and thereunder, regardless of whether or not said conditions were known at the time of the execution of this instrument.

15.4.1.4 California Civil Code Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

By initialing this paragraph, Lessee acknowledges that it has read, is familiar with, and waives the provisions of California Civil Code §1542 set forth above, and agrees to all of the provisions of Subsection 15.4.1.3 above.

Lessee's Initials

15.4.2 Right of Offset. Except as otherwise expressly provided in this Lease, Lessee acknowledges that the rent provided for in this Lease has been agreed upon in light of Lessee's construction, maintenance and repair obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by applicable law, Lessee hereby waives any and all rights, if any, to make repairs at the expense of County and to deduct or offset the cost thereof from the Annual Minimum Rent, Monthly Minimum Rent, Percentage Rent or any other sums due County hereunder.

15.5 Holding Over. If Lessee holds over after the expiration of the Term for any cause, with or without the express or implied consent of County, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Minimum Monthly Rent and Percentage Rent rates in effect



at the end of the Term shall be increased to one hundred twenty-five percent (125%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed by Lessee to remove machines, appliances and other equipment during the time periods herein provided for such removal, except as expressly provided in Subsection 2.3.2 with respect to any Post Term Removal Period.

Nothing contained herein shall be construed as consent by County to any holding over by Lessee, and County expressly reserves the right to require Lessee to surrender possession of the Premises to County as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 15.5 shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity. If Lessee fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to County accruing therefrom, Lessee shall protect, defend, indemnify and hold County harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding tenant ground lessee (or subtenant) arising from such failure to surrender, and any lost profits to County resulting therefrom.

15.6 Waiver of Conditions or Covenants. Except as stated in writing by the waiving party, any waiver by either party of any breach of any one or more of the covenants, conditions, terms, and agreements of this Lease shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term, or agreement of this Lease, nor shall failure on the part of either party to require exact full and complete compliance with any of the covenants, conditions, terms, or agreements of this Lease be construed as in any manner changing the terms hereof or estopping that party from enforcing the full provisions hereof, nor shall the terms of this Lease be changed or altered in any manner whatsoever other than by written agreement of County and Lessee. No delay, failure, or omission of County to re-enter the Premises or of either party to exercise any right, power, privilege, or option, arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right. No notice to Lessee shall be required to restore or revive "time of the essence" after the waiver by County of any default. Except as specifically provided in this Lease, no option, right, power, remedy, or privilege of either party shall be construed as being exhausted by the exercise thereof in one or more instances.

15.7 Remedies Cumulative. The rights, powers, options, and remedies given County by this agreement shall be cumulative except as otherwise specifically provided for in this Lease.

15.8 Authorized Right of Entry. In any and all cases in which provision is made herein for termination of this Lease, or for exercise by County of right of entry or re-entry upon the Premises, or in case of abandonment or vacation of the Premises by Lessee, Lessee hereby irrevocably authorizes County to enter upon the Premises and remove any and all persons and property whatsoever situated upon the Premises and place all or any portion of said property, except such property as may be forfeited to County, in storage for the account of and at the expense of Lessee.



Lessee agrees to indemnify, defend and save harmless County from any cost, expense, loss or damage arising out of or caused by any such entry or re-entry upon the Premises and the removal of persons and property and storage of such property by County and its agents.

15.9 Place of Payment and Filing. All rentals shall be paid to and all statements and reports herein required and other items deliverable to County hereunder shall be filed with or delivered to the Department. Checks, drafts, letters of credit and money orders shall be made payable to the County of Los Angeles.

15.10 Service of Written Notice or Process. Any notice required to be sent under this Lease shall be in compliance with and subject to this Section 15.10. If Lessee is not a resident of the State of California, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation, Lessee shall file with Director a designation of a natural person residing in the County of Los Angeles, State of California, or a service company, such as CT Corporation, which is authorized to accept service, giving his or its name, residence, and business address, as the agent of Lessee for the service of process in any court action between Lessee and County, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee.

If for any reason service of such process upon such agent is not possible, then any officer of Lessee may be personally served with such process outside of the State of California and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

Written notice addressed to Lessee at the addresses below-described, or to such other address that Lessee may in writing file with Director, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, provided in all cases there is a return receipt requested (or other similar evidence of delivery by overnight delivery service) and postage or other delivery charges prepaid, by registered or certified mail posted in the County of Los Angeles, California, Federal Express or DHL, or such other services as Lessee and County may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the date of delivery or attempted delivery in the case of registered or certified mail, as evidenced by the mail receipt (but in any case not later than the date of actual receipt).

Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or encumbrancer of such Major Sublessee of which County has been given written notice and an address for service. Notice given to Lessee as provided for herein shall be effective as to Lessee notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

As of the date of execution hereof, the persons authorized to receive notice on behalf of County and Lessee are as follows:



COUNTY: Director
Department of Beaches and Harbors
Los Angeles County
13837 Fiji Way
Marina del Rey, California 90292
Phone: 310/305-9522
Fax: 310/821-6345

With a Copy to: Office of County Counsel
Los Angeles County
500 West Temple Street
Los Angeles, California 90012
Attn: County Counsel
Phone: 213/974-1801
Fax: 213/617-7182

LESSEE: NF Marina LP
6222 Wilshire Boulevard, Suite 400
Los Angeles, California 90048
Attn: Mr. David J. Nagel
Phone: 323/556-6600
Fax: 323/556-6621

With a Copy to: NF Marina LP
6222 Wilshire Boulevard, Suite 400
Los Angeles, California 90048
Attn: General Counsel
Phone: 323/556-6600
Fax: 323/556-6607

With an Additional
Copy to: Manatt, Phelps & Phillips, LLP
11355 W. Olympic Boulevard
Los Angeles, California 90064
Attn: Keith Allen-Niesen, Esq.
Phone: 310/312-4105

Either party shall have the right to change its notice address by written notice to the other party of such change in accordance with the provisions of this Section 15.10.

15.11 Interest. In any situation where County has advanced sums on behalf of Lessee pursuant to this Lease, such sums shall be due and payable as set forth in this Lease, together with interest at the Applicable Rate (unless another rate is specifically provided herein) from the date such sums were first advanced, until the time payment is received. In the event that Lessee repays sums advanced by County on Lessee's behalf with interest in excess of the maximum rate permitted by Applicable Laws, County shall either refund such excess payment or credit it against subsequent installments of Annual Minimum Rent and Percentage Rent.



15.12 Captions. The captions contained in this Lease are for informational purposes only, and are not to be used to interpret or explain the particular provisions of this Lease.

15.13 Attorneys' Fees. In the event of any action, proceeding or arbitration arising out of or in connection with this Lease, whether or not pursued to judgment, the prevailing party shall be entitled, in addition to all other relief, to recover its costs and reasonable attorneys' fees, including without limitation reasonable attorneys' fees for County Counsel's services where County is represented by the County Counsel and is the prevailing party, and also including all fees, costs and expenses incurred in executing, perfecting, enforcing and collecting any judgment.

15.14 Amendments. This Lease may only be amended in writing executed by duly authorized officials of Lessee and County. Notwithstanding the foregoing, Director shall have the power to execute such amendments to this Lease as are necessary to implement any arbitration judgment issued pursuant to this Lease. Subject to Section 16.13, no amendment shall be binding upon an Encumbrance Holder as to which County has been notified in writing, unless the consent of such Encumbrance Holder is obtained with respect to such amendment.

15.15 Time For Director Approvals. Except where a different time period is specifically provided for in this Lease, whenever in this Lease the approval of Director is required, approval shall be deemed not given unless within thirty (30) days after the date of the receipt of the written request for approval from Lessee, Director either (a) approves such request in writing, or (b) notifies Lessee that it is not reasonably possible to complete such review within the thirty (30)-day period, provides a final date for approval or disapproval by Director (the "Extended Time") and approves such request in writing prior to such Extended Time. If Director does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved. If Director disapproves a matter that requires its approval under this Lease, then Director shall notify Lessee in writing (with reasonable specificity) of the reason or reasons for such disapproval.

15.16 Time For County Action. Notwithstanding anything to the contrary contained in this Lease, wherever Director in good faith determines that a County action required hereunder necessitates approval from or a vote of one or more of County's boards or commissions or County's Board of Supervisors, the time period for County performance of such action shall be extended as is necessary in order to secure such approval or vote, and County shall not be deemed to be in default hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

15.17 Estoppel Certificates. Each party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other party, a certificate stating: (i) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (ii) that, to the best knowledge of such party, the other party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case); and (iii) if requested, the amount of the Security Deposit, Annual Minimum Rent, Percentage Rent and other material economic terms and conditions of this Lease. Prospective purchasers, Major Sublessees and Encumbrance Holders may rely on such statements.

15.18 Indemnity Obligations. Whenever in this Lease there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a first name followed by a last name, though the specific characters are not clearly legible.

include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

15.19 Controlled Prices. Lessee shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the Premises, whether the same are supplied by Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. Said prices shall be fair and reasonable, based upon the following two (2) considerations: first, that the property herein demised is intended to serve a public use and to provide needed facilities to the public at fair and reasonable cost; and second, that Lessee is entitled to a fair and reasonable return upon his investment pursuant to this Lease. In the event that Director notifies Lessee that any of said prices are not fair and reasonable, Lessee shall have the right to confer with Director and to justify said prices. If, after reasonable conference and consultation, Director shall determine that any of said prices are not fair and reasonable, the same shall be modified by Lessee or its Sublessees, assignees, concessionaires, permittees or licensees, as directed. Lessee may appeal the determination of Director to the Board, whose decision shall be final and conclusive. Pending such appeal, the prices fixed by Director shall be the maximum charged by Lessee.

15.20 Waterfront Promenade. The Redevelopment Work includes the development by Lessee of a continuous pedestrian walkway with landscaping, lighting, seating, fencing and other improvements (the "**Promenade**") as described in the Renovation Plan and in accordance with the Final Plans and Specifications for such work described in Article 5. Lessee shall complete the Promenade by the Required Anchorage Improvements Completion Date, subject to extension for Force Majeure pursuant to Section 5.6. County hereby reserves a public easement for access over and use of the Promenade for fire lane uses, pedestrian purposes and such other related uses (including, if approved by County, bicycling, rollerblading and similar activities) as may be established by County from time to time, all in accordance with such rules and regulations as are promulgated from time to time by County regulating such public use. Lessee shall be responsible for the maintenance and repair of the Promenade in accordance with commercially reasonable maintenance and repair standards for the Promenade established by County from time to time on a nondiscriminatory basis. The exact legal description of the Premises encumbered by the public easement reserved herein shall be established based upon the final as-built drawings for the Promenade to be delivered by Lessee upon the completion thereof in accordance with the terms and provisions of Subsection 5.7.7 of this Lease. At the request of either party, such legal description shall be recorded in the Official Records of Los Angeles County as a supplement to this Lease.

15.21 Management of Anchorage Improvements/Dockmaster. During the Term of the Lease, Lessee shall maintain a dockmaster program, and engage an experienced, professional marina management firm, reasonably acceptable to Director for the day to day full-time management and operation of the Anchorage Improvements. After Director's approval of such management firm, Lessee shall not have the right to change the management firm without first obtaining the prior approval of Director, which approval shall not be unreasonably withheld, conditioned or delayed. If during the Term in the reasonable judgment of Director the then current management firm is performing in an unsatisfactory manner, then at the request of Director Lessee shall replace such management firm with a new management firm reasonably acceptable to Director. If during the Term the then current management firm terminates its



contract, then Lessee shall have the right to replace such management firm with another management firm approved by Director, which approval shall not be unreasonably withheld, conditioned or delayed.

15.22 Seaworthy Vessels. On or before January 1, April 1, July 1 and October 1 of each year during the Term, Lessee shall deliver to Director a report which contains the following information with respect to every vessel (including floating homes as defined in Title 19 of the Los Angeles County Code) moored within the Premises: (a) the name, address and telephone number of the registered owner (and slip tenant, if other than the registered owner) for each vessel; (b) the state registration or federal document number, and name (if any), of the vessel; (c) whether the vessel is a power vessel, sailing vessel or floating home; and (d) the slip number and length of the vessel, and whether the vessel is presently authorized by Lessee for liveaboard tenancy. In addition, Lessee shall require, and shall certify annually to Director, that as a condition of slip rental and continued slip tenancy, all new slip tenanted vessels from and after the immediately preceding certification (or in the case of the initial certification, from and after the Effective Date) have been required to pass seaworthiness inspection by the Harbor Patrol within sixty (60) days after such slip rental. Thereafter, all of Lessee's slip leases shall provide that any newly tenanted vessel which is unable to pass such inspection within the required period, or such reasonable extension thereof as may be granted in Director's sole discretion, shall be ineligible for continued slip tenancy on the Premises and shall be removed therefrom. The requirements of the two preceding sentences shall not be applicable to any vessel which is specifically exempted from seaworthiness requirements by Title 19 of the Los Angeles County Code.

15.23 Pump-Out Station. Following Lessee's completion of the Anchorage Improvements, Lessee shall operate in-dock pump-out facilities on the Premises for use of boat pump-out services at a nominal fee.

16. ARBITRATION.

Except as otherwise provided by this Article 16, disputed matters which may be arbitrated pursuant to this Lease shall be settled by binding arbitration in accordance with the then existing provisions of the California Arbitration Act, which as of the date hereof is contained in Title 9 of Part III of the California Code of Civil Procedure, commencing with Section 1280.

(a) Either party (the "**Initiating Party**") may initiate the arbitration process by sending written notice ("**Request for Arbitration**") to the other party (the "**Responding Party**") requesting initiation of the arbitration process and setting forth a brief description of the dispute or disputes to be resolved and the contention(s) of the Initiating Party. Within ten (10) days after service of the Request for Arbitration, the Responding Party shall file a "**Response**" setting forth the Responding Party's description of the dispute and the contention(s) of Responding Party. If Responding Party has any "**Additional Disputes**" he shall follow the format described for the Initiating Party. The Initiating Party will respond within ten (10) days after service of the Additional Disputes setting forth Initiating Party's description of the Additional Disputes and contentions regarding the Additional Disputes.



(b) Notwithstanding anything to the contrary which may now or hereafter be contained in the California Arbitration Act, the parties agree that the following provisions shall apply to any and all arbitration proceedings conducted pursuant to this Lease:

16.1 Selection of Arbitrator. The parties shall attempt to agree upon an arbitrator who shall decide the matter. If, for any reason, the parties are unable to agree upon the arbitrator within ten (10) days of the date the Initiating Party serves a request for arbitration on the Responding Party, then at any time on or after such date either party may petition for the appointment of the arbitrator as provided in California Code of Civil Procedure Section 1281.6.

16.2 Arbitrator. The arbitrator shall be a retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any United States District Court or Court of Appeals located within the State, who has agreed to resolve civil disputes.

16.3 Scope of Arbitration. County and Lessee affirm that the mutual objective of such arbitration is to resolve the dispute as expeditiously as possible. The arbitration process shall not apply or be used to determine issues other than (i) those presented to the arbitrator by the Initiating Party provided those disputes are arbitrable disputes pursuant to this Lease, (ii) Additional Disputes presented to the arbitrator by the Responding Party, provided that any such Additional Disputes constitute arbitrable disputes pursuant to this Lease and (iii) such related preliminary or procedural issues as are necessary to resolve (i) and/or (ii) above. The arbitrator shall render an award. Either party may, at its sole cost and expense, request a statement of decision explaining the arbitrator's reasoning which shall be in such detail as the arbitrator may determine. Unless otherwise expressly agreed by the parties in writing, the award shall be made by the arbitrator no later than the sooner of six (6) months after the date on which the arbitrator is selected by mutual agreement or court order, whichever is applicable, or five (5) months after the date of a denial of a petition to disqualify a potential arbitrator for cause. County and Lessee hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award within such period. Notwithstanding the foregoing, failure to complete the arbitration process within such period shall not render such arbitration or any determination made therein void or voidable; however, at any time after the expiration of the foregoing five (5) or six (6) month periods, as applicable, either party may deliver written notice to the arbitrator and the other party either terminating the arbitration or declaring such party's intent to terminate the arbitration if the award is not issued within a specified number of days after delivery of such notice. If the arbitrator's award is not issued prior to the expiration of said specified period, the arbitration shall be terminated and the parties shall recommence arbitration proceedings pursuant to this Article 16.

16.4 Immunity. The parties hereto agree that the arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator pursuant to this Lease.

16.5 Section 1282.2. The provisions of Code of Civil Procedure § 1282.2 shall apply to the arbitration proceedings except to the extent they are inconsistent with the following:

- (1) Unless the parties otherwise agree, the arbitrator shall appoint a time and place for the hearing and shall cause notice thereof to be served as provided



in said § 1282.2 not less than ninety (90) days before the hearing, regardless of the aggregate amount in controversy.

(2) No later than sixty (60) days prior to the date set for the hearing (unless, upon a showing of good cause by either party, the arbitrator establishes a different period), in lieu of the exchange and inspection authorized by Code of Civil Procedure § 1282.2(a)(2)(A), (B) and (C), the parties shall simultaneously exchange the following documents by personal delivery to each other and to the arbitrator:

(a) a written Statement of Position, as further defined below, setting forth in detail that party's final position regarding the matter in dispute and specific numerical proposal for resolution of monetary disputes;

(b) a list of witnesses each party intends to call at the hearing, designating which witnesses will be called as expert witnesses and a summary of each witness's testimony;

(c) a list of the documents each intends to introduce at the hearing, together with complete and correct copies of all of such documents; and,

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence (as defined below) each intends to introduce at the hearing, together with complete and correct copies of all of such Written Appraisal Evidence.

(3) No later than twenty (20) days prior to the date set for the hearing, each party may file a reply to the other party's Statement of Position ("**Reply**"). The Reply shall contain the following information:

(a) a written statement, to be limited to that party's rebuttal to the matters set forth in the other party's Statement of Position;

(b) a list of witnesses each party intends to call at the hearing to rebut the evidence to be presented by the other party, designating which witnesses will be called as expert witnesses;

(c) a list of the documents each intends to introduce at the hearing to rebut the evidence to be presented by the other party, together with complete and correct copies of all of such documents (unless, upon a showing of good cause by either party, the arbitrator establishes a different deadline for delivering true and correct copies of such documents);

(d) if the issue involves Fair Market Rental Value or a valuation matter, a list of all Written Appraisal Evidence, or written critiques of the other party's Written Appraisal Evidence if any, each intends to introduce at the hearing to rebut the evidence presented by the other party, together with complete and correct copies of all of such Written Appraisal Evidence (unless, upon a showing of good cause by either party, the arbitrator establishes a



different deadline for delivering true and correct copies of such Written Appraisal Evidence); and

(e) Witnesses or documents to be used solely for impeachment of a witness need not be identified or produced.

(4) The arbitrator is not bound by the rules of evidence, but may not consider any evidence not presented at the hearing. The arbitrator may exclude evidence for any reason a court may exclude evidence or as provided in this Lease.

16.6 Statements of Position. The Statement of Position to be delivered by Section 16.5 shall comply with the following requirements:

(1) Where the dispute involves rent to be charged, market values, insurance levels or other monetary amounts, the Statements of Position shall numerically set forth the existing minimum rent, percentage rent, market value, insurance level and/or other monetary amounts in dispute, the party's proposed new minimum rent, percentage rent, market value, insurance level and/or other monetary amounts, and shall additionally set forth the facts supporting such party's position.

(2) If the dispute relates to Improvement Costs, the Statements of Position shall set forth the facts supporting such party's position and the amount of each cost which the party believes should be allowed or disallowed.

16.7 Written Appraisal Evidence. Neither party may, at any time during the proceedings, introduce any written report which expresses an opinion regarding Fair Market Rental Value or the fair market value of the Premises, or any portion thereof, ("**Written Appraisal Evidence**") unless such Written Appraisal Evidence substantially complies with the following standards: it shall describe the Premises; identify the uses permitted thereon; describe or take into consideration the terms, conditions and restrictions of this Lease; correlate the appraisal method(s) applied; discuss the relevant factors and data considered; review rentals paid by lessees in Marina del Rey and other marina locations within Southern California who are authorized to conduct similar activities on comparable leaseholds; and, describe the technique of analysis, limiting conditions and computations that were used in the formulation of the valuation opinion expressed. With respect to disputes regarding Fair Market Rental Value, such Written Appraisal Evidence shall express an opinion regarding the fair market rental value of the Premises as prescribed by Section 4.4.1. Written Appraisal Evidence in connection with disputes arising out of Article 6 of this Lease shall predicate any valuation conclusions contained therein on the Income Approach. Written Appraisal Evidence shall in all other respects be in material conformity and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of The Appraisal Institute or any successor entity.

16.8 Evidence. The provisions of Code of Civil Procedure § 1282.2(a)(2)(E) shall not apply to the arbitration proceeding. The arbitrator shall have no discretion to allow a party to introduce witnesses, documents or Written Appraisal Evidence (other than impeachment testimony) unless such information was previously delivered to the other party in accordance with Section 16.5 and, in the case of Written Appraisal Evidence, substantially complies with the



requirements of Section 16.7, or such evidence consists of a transcript of a deposition of an expert witness conducted pursuant to Section 16.9. Notwithstanding the foregoing, the arbitrator may allow a party to introduce evidence which, in the exercise of reasonable diligence, could not have been delivered to the other party in accordance with Section 16.5, provided such evidence is otherwise permissible hereunder.

16.9 Discovery. The provisions of Code of Civil Procedure § 1283.05 shall not apply to the arbitration proceedings except to the extent incorporated by other sections of the California Arbitration Act which apply to the arbitration proceedings. There shall be no pre-arbitration discovery except as provided in Section 16.5; provided, however, each party shall have the right, no later than seven (7) days prior to the date first set for the hearing, to conduct a deposition, not to exceed three (3) hours in duration unless the arbitrator otherwise determines that good cause exists to justify a longer period, of any person identified by the other party as an expert witness pursuant to Sections 16.5 (2)(b) or 16.5 (3)(b).

16.10 Awards of Arbitrators.

16.10.1 Monetary Issues. With respect to monetary disputes (including without limitation disputes regarding Percentage Rent, Fair Market Rental Value and the amount of coverage under the policies of insurance required pursuant to Article 9 of this Lease), the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position. The arbitrator shall instead select whichever of the two Statements of Position is the closest to the monetary or numerical amount that the arbitrator determines to be the appropriate determination of the rent, expense, claim, cost, delay, coverage or other matter in dispute and shall render an award consistent with such Statement of Position. For purposes of this Section 16.10, each dispute regarding Annual Minimum Rent, each category of Percentage Rent and the amount of required insurance coverage shall be considered separate disputes (a "Separate Dispute"). While the arbitrator shall have no right to propose a middle ground or any proposed modification of either Statement of Position concerning a Separate Dispute, the arbitrator shall have the right, if the arbitrator so chooses, to choose one party's Statement of Position on one or more of the Separate Disputes, while selecting the other party's Statement of Position on the remaining Separate Disputes. For example, if the parties are unable to agree on the Annual Minimum Rent and three Percentage Rent categories to be renegotiated pursuant to Section 4.4 and the amount of liability insurance coverage to be renegotiated pursuant to Section 9.6, then there shall be five Separate Disputes and the arbitrator shall be permitted to select the County's Statement of Position with respect to none, some or all of such five Separate Disputes and select the Lessee's Statement of Position, on the balance, if any, of such five Separate Disputes. Upon the arbitrator's selection of a Statement of Position, pursuant to this Article 16, the Statement of Position so chosen and the award rendered by the arbitrator thereon shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

16.10.2 Nonmonetary Issues. With respect to nonmonetary issues and disputes, the arbitrator shall determine the most appropriate resolution of the issue or dispute, taking into account the Statements of Position submitted by the parties, and shall render



an award accordingly. Such award shall be final and binding upon the parties, absent Gross Error on the part of the arbitrator.

16.11 Powers of Arbitrator. In rendering the award, the arbitrator shall have the power to consult or examine experts or authorities not disclosed by a party pursuant to Section 16.5(2) hereof, provided that each party is afforded the right to cross-examine such expert or rebut such authority.

16.12 Costs of Arbitration. Lessee and County shall equally share the expenses and fees of the arbitrator, together with other expenses of arbitration incurred or approved by the arbitrator. Failure of either party to pay its share of expenses and fees constitutes a material breach of such party's obligations hereunder.

16.13 Amendment to Implement Judgment. Within ten (10) days after the issuance of any award by the arbitrator becomes final, County will draft a proposed amendment to the Lease setting forth the relevant terms of such award and transmit such proposed amendment to Lessee and any Encumbrance Holder(s) as to which County has been provided written notice, for their review. Within ten (10) days after delivery of the proposed amendment to Lessee and such Encumbrance Holder(s) for their review, Lessee or any such Encumbrance Holder(s) shall have the right to notify County in writing of any deficiencies or errors in the proposed amendment. If County does not receive notice of a deficiency or error within such ten (10) day period, then Lessee shall execute the amendment within seven (7) days after the end of such ten (10) day period and such amendment shall be binding on Lessee and all Encumbrance Holders. If the parties (including an Encumbrance Holder) shall, in good faith, disagree upon the form of any such amendment, such disagreement shall be submitted to the arbitrator for resolution. Upon execution by Lessee, any amendment described in this Section 16.13 shall thereafter be executed by County as soon as reasonably practicable.

16.14 Impact of Gross Error Allegations. Where either party has charged the arbitrator with Gross Error:

16.14.1 The award shall not be implemented if the party alleging Gross Error obtains a judgment of a court of competent jurisdiction stating that the arbitrator was guilty of Gross Error and vacating the arbitration award ("**Disqualification Judgment**"). In the event of a Disqualification Judgment, the arbitration process shall begin over immediately in accordance with this Section 16.14, which arbitration shall be conducted (with a different arbitrator) as expeditiously as reasonably possible.

16.14.2 The party alleging Gross Error shall have the burden of proof.

16.14.3 For the purposes of this Section 16.14, the term "**Gross Error**" shall mean that the arbitration award is subject to vacation pursuant to California Code of Civil Procedure § 1286.2 or any successor provision.

16.15 Notice.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE



"ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

Initials of Lessee

Initials of County

17. DEFINITION OF TERMS; INTERPRETATION.

17.1 Meanings of Words Not Specifically Defined. Words and phrases contained herein shall be construed according to the context and the approved usage of the English language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning by law, or are defined in Section 1.1, are to be construed according to such technical, peculiar, and appropriate meaning or definition.

17.2 Tense; Gender; Number; Person. Words used in this Lease in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter and the neuter includes the masculine and feminine; the singular number includes the plural and the plural the singular; the word "person" includes a corporation, partnership, limited liability company or similar entity, as well as a natural person.

17.3 Business Days. For the purposes of this Lease, "business day" shall mean a business day as set forth in Section 9 of the California Civil Code, and shall include "Optional Bank Holidays" as defined in Section 7.1 of the California Civil Code.

17.4 Parties Represented by Consultants, Counsel. Both County and Lessee have entered this Lease following advice from independent financial consultants and legal counsel of their own choosing. This document is the result of combined efforts of both parties and their consultants and attorneys. Thus, any rule of law or construction which provides that ambiguity in a term or provision shall be construed against the draftsman shall not apply to this Lease.

17.5 Governing Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

17.6 Reasonableness Standard. Except where a different standard or a time period is specifically provided herein, whenever the consent of County or Lessee is required under this Lease, such consent shall not be unreasonably withheld, conditioned or delayed, and whenever



this Lease grants County or Lessee the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, County and Lessee shall act reasonably and in good faith. These provisions shall only apply to County acting in its proprietary capacity.

17.7 Compliance with Code. County and Lessee agree and acknowledge that this Lease satisfies the requirements of Sections 25536 and 25907 of the California Government Code as a result of various provisions contained herein.

17.8 Memorandum of Lease. The parties hereto shall execute and acknowledge a memorandum of lease extension, in recordable form and otherwise satisfactory to the parties hereto, for recording as soon as is practicable on or following the Effective Date.

17.9 Counterparts. This Lease may be executed in counterparts, each of which shall constitute an original and all of which shall collectively constitute one fully-executed document.

SIGNATURES ON FOLLOWING PAGE

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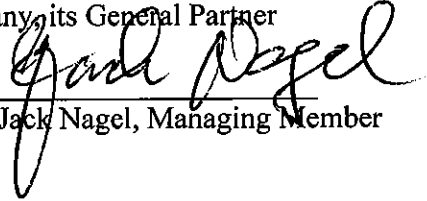
IN WITNESS WHEREOF, County and Lessee have entered into this Lease as of the Effective Date.

THE COUNTY OF LOS ANGELES

NF MARINA LP, a California limited partnership

By: _____
Chairman, Board of Supervisors

By: NFM LLC, a California limited liability company, its General Partner

By: 
Jack Nagel, Managing Member

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
ACTING COUNTY COUNSEL

By: _____
Deputy

ATTEST:

SACHI A. HAMAI,
Executive Officer of the
Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____



EXHIBIT A
LEGAL DESCRIPTION OF PREMISES

[To be added]


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EXHIBIT B
RENOVATION PLAN

[To be added]

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EXHIBIT A
PARCEL 8 LEASE EXTENSION OPTION
RENOVATION PLAN

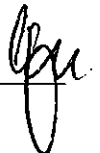
Initial 

TERM SHEET EXHIBIT A – PARCEL 8T

February 20, 2008 revised 3/17/09

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| Apartment and Marina Renovation Template | 8T Lessee Proposal |
| A. Scope of Work | |
| 1. Landside Renovation | |
| a) Exterior: Apartment Buildings | |
| <ul style="list-style-type: none"> Apartment Buildings' Exteriors to be Re-designed and Upgraded to Reduce the Perceived Length and Mass of the Buildings, and Provide a More Contemporary look by Performing the Following Tasks: | <ul style="list-style-type: none"> The exterior elevation of the 3-story buildings will be completely redesigned. The long continuous balcony rails will be removed and a portion of the existing balcony will be enclosed and utilized as additional living space within the apartment units. A new wall will be erected at the exterior edge of the existing balconies, to create a new alcove within the bedroom and/or living areas (See Exhibits A-6, A-6a, A-6b & A-6d). New vertical tower elements will project above the existing roofline, at various heights to interrupt and mitigate the long existing roofline. These vertical elements will be painted in contrasting colors (See Exhibits A-7 & A-7a). At the four first floor lobbies off Tahiti Way, the two flanking vertical projections will be re-designed in keeping with the new contemporary exterior with a standing seam metal roof painted in contrasting colors (See Exhibit A-7). The existing sliding glass doors and windows at the balconies will be replaced with new windows and sliders using dual glaze Low E (high thermal performance) glass. <p>The existing built up roof surface will be replaced with a new four-ply roofing system, and new roof mounted compressors on equipment pads will be installed for the new HVAC systems planned for each unit.</p> |
| <ul style="list-style-type: none"> Exterior Plaster and Wood Surface | <ul style="list-style-type: none"> All exterior wood trim and balcony rails will be removed and replaced. All the existing heavily textured plaster material will be sandblasted and a new smooth sand finished surface will be reapplied over the existing plaster. Aluminum reglets, horizontal recessed joints within the plaster surface will be applied horizontally at the first, second and third floor lines, and painted in an accent color (See Exhibit A-7). |
| <ul style="list-style-type: none"> Patio/Balcony Railings | <ul style="list-style-type: none"> All wood balcony rails and wood trim will be removed, and the existing balcony material will be removed. A new balcony rail |

| Apartment and Marina Renovation Template | 8T Lessee Proposal |
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| <ul style="list-style-type: none"> ▪ Patio/Balcony Railings (con't) | <p>system comprised of aluminum railings with an appropriate baked on finish and green tinted glass inserts will be installed. The wood fascia board will be replaced with a cementitious fiber board and painted in a contrasting color. The existing balcony surface will be replaced with a new two-part epoxy non-skid waterproof surfacing material. The color surface will be of a color to complement the new exterior colors of the building (See Exhibits A-7& A-7a).</p> |
| <ul style="list-style-type: none"> ▪ Mansard Roof and Roofing Materials | <ul style="list-style-type: none"> • The existing red clay tile mansard roof material will be removed and a new standing seam metal roof will be installed. The long continuous parapet roofline will be interrupted by new tower extensions above the parapet roofline. Both apartment buildings' roofs will be removed, new equipment platforms will be constructed and new crickets, flashing and roof accessories will be installed; both buildings will be entirely re-roofed (See Exhibit A-7). |
| b) Interior Apartment Buildings | |
| a) Apartment Buildings' Common Areas | |
| <ul style="list-style-type: none"> ▪ Entry Door and Other Common Area Doors | <ul style="list-style-type: none"> • New raised panel entry doors with new hardware and code compliant deadbolts will be installed with applied trim at exterior face. All doors will be painted. New entry doors to be 1 hour rated metal or solid core wood, ¾", raised panel, self closing, with lock and latch by Schlage (Falcon Line) or equal. |
| <ul style="list-style-type: none"> ▪ Hallways | <ul style="list-style-type: none"> • Interior hallways will be completely remodeled with new paint, door moldings, carpet/padding, baseboard molding, light fixtures and door tags. All wall surfaces will be reconditioned using a "texture" process and repainted. There will be new 6" base boards, paint color to be determined over orange peel textured walls. Light fixtures to be replaced to accommodate higher wattage at unit entry doors, and ceiling mounted general illumination. |
| <ul style="list-style-type: none"> ▪ Trash Rooms | <ul style="list-style-type: none"> • All trash rooms will be repainted. New light fixtures and vinyl flooring and base, as appropriate, will be installed. 6" vinyl base, vinyl floor to be Armstrong VCT Standard Excelon Multicolor. Light fixtures to be 2x4 fluorescent cloud fixtures. |
| <ul style="list-style-type: none"> ▪ Elevators | <ul style="list-style-type: none"> • All elevator cabs, including the elevator in the clubhouse, will have the existing finishes removed and replaced with new updated surfaces that are attractive and impervious to normal wear and tear. The elevator equipment including new panels, flooring and lighting will be modernized to |



| Apartment and Marina Renovation Template | 8T Lessee Proposal |
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| ▪ Elevators (con't) | current standards. All elevator mechanical systems to be reconditioned or replaced as is needed to make elevators modernized to current standards. |
| ▪ Laundry Rooms | <ul style="list-style-type: none"> Unit floor plans will be re-designed to accommodate new-stacked washers and dryers in all units. The existing laundry rooms will be incorporated into the adjacent unit as new living area. (See Exhibit A-6a, Unit Type A-1) |
| ▪ Internet and Cable TV | <ul style="list-style-type: none"> All units will be wired to accommodate High-Speed Internet Access and Cable TV service. |
| ▪ Sewer, Water and Electrical Systems | <ul style="list-style-type: none"> The existing galvanized horizontal and vertical water piping will be replaced with new copper lines. Electrical panel upgrades within the units will be upgraded to accommodate the new HVAC systems, washers & dryers, and current standards of electrical demand. |
| b) Apartment Units' Interiors | |
| ▪ Enlarging the Units | <ul style="list-style-type: none"> Balconies currently extend across the entire width of the units. A portion of the exterior balcony will be enclosed to add area to the units. One-bedroom units will have an alcove off the bedroom and the two bedroom units will have an alcove off both the bedroom and the living room. The construction improvements will create more area inside the units (See Existing & Proposed Unit Plans. Exhibits A-5, A-6, A-6a, A-6b, A-6c-1&2, & A-6d). Additional space will be captured in the units flanking the elevator lobbies by allocating the common area laundry rooms and the under utilized storage space on each floor into the adjacent units (See Unit Plans A-1, A-2 & B-1 on Exhibits A-6a & A-6b). |
| ▪ Kitchens | <ul style="list-style-type: none"> All kitchens will be completely redesigned with the addition of islands, new counter tops, cabinets, plumbing, fixtures, sinks, and floor coverings (See Items Following). |
| ▪ Cabinets | <ul style="list-style-type: none"> All cabinets will be replaced with totally new cabinets by Pozzi-Hill Inc. Cabinets to be Melamine faced particle board with solid wood doors and drawer fascias. All hinges to be European/concealed. |

| <i>Apartment and Marina Renovation Template</i> | <i>8T Lessee Proposal</i> |
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| ▪ Counters | <ul style="list-style-type: none"> Replace Formica counter tops in every kitchen with a new high finish granite, Southland Stone, pattern 116, grout color to be determined. |
| ▪ Faucets | New faucets will be installed (American Standard or equal). |
| ▪ Sinks | <ul style="list-style-type: none"> Kitchen sinks will be replaced with self rimming Stainless steel sinks by Elkay or equal. |
| ▪ Appliances | <ul style="list-style-type: none"> A new dishwasher, four-burner stove/oven combination, top mounted microwave oven, eighteen cubic foot refrigerator/freezer and washer/ dryer will be installed in each unit. <p>Anticipated appliance list:</p> <ul style="list-style-type: none"> Refrigerators – GE Stainless top freezer GTSI8SHSS Stove/Oven – Magic GE 30" freestanding gas ranch Stainless finish JGBS23SHSS Dishwasher – GE Built-in Stainless LGSD 3360NSS Microwave – GE Spacemaker Over the Range JNM1541SMSS Washer/Dryer – GE Unitized Spacemaker WSM278ODWW |
| ▪ HVAC | <ul style="list-style-type: none"> A completely new forced Air Heating, Ventilation and Air Conditioning (HVAC) System to be installed in each unit, using rooftop compressor units to provide cooling for the units (First Company air handlers and York Company condensers or comparable). |
| ▪ Bathrooms | <ul style="list-style-type: none"> All bathrooms will be completely repainted and will receive new floor covering, new countertops, new medicine cabinets, new mirrors, new faucets, and new toilet seats. |
| ▪ Bathroom Cabinets/ Mirrors | <ul style="list-style-type: none"> Each bathroom cabinet will be replaced or have new routed panel cabinet doors (Pozzi-Hill or equal), drawer fronts and side panels installed. New hardware (brushed chrome finish) will be mounted on each door and drawer. The interiors will be painted. New mirrors will be installed, as needed. |
| ▪ Bathroom Counters | <ul style="list-style-type: none"> Existing bathroom counters will be removed and replaced with new high finish virtual marble counters. |



| Apartment and Marina Renovation Template | 8T Lessee Proposal |
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| <ul style="list-style-type: none"> Bathroom Faucets | <ul style="list-style-type: none"> Existing bathroom faucets will be replaced with new American Standard or equal. |
| <ul style="list-style-type: none"> Bathroom Sinks | <ul style="list-style-type: none"> Bathroom sinks will either be replaced or resurfaced depending on condition. |
| <ul style="list-style-type: none"> Bathroom Fixtures | <ul style="list-style-type: none"> All towel bars, toilet paper holders, toilet seats, and medicine cabinets will be replaced. |
| <ul style="list-style-type: none"> Bathroom Showers/ Bathtubs | <ul style="list-style-type: none"> Each shower/tub to be individually evaluated to determine whether to resurface or replace. All shower doors will be replaced (polished chrome finish). All tub faucets, showerheads and drain hardware will be replaced (American Standard or equal).. |
| c) General Improvements - Apartment Buildings | |
| a) Walls | |
| <ul style="list-style-type: none"> Prepped and Painted | <ul style="list-style-type: none"> Each unit will be completely repainted with a two-coat roll on paint job, and will include the removal of all existing face and switch plate plugs, and the installation of all new plates/switches/plugs. |
| b) Windows | |
| <ul style="list-style-type: none"> Remove Existing Metal Framed Windows and Doors and Replace with Double Paned Vinyl Windows | <ul style="list-style-type: none"> All sliding doors and windows will be replaced with double paned low E, vinyl covered windows and doors. (Window Manufacturer to be Milgard or equal). |
| <ul style="list-style-type: none"> Replace All Windows Coverings | <ul style="list-style-type: none"> All windows and sliding glass doors will receive new window coverings in the form of mini blinds (window) or vertical blinds (sliding glass doors). |
| c) Doors | |
| <ul style="list-style-type: none"> Replace All Interior Wood Doors and Hardware | <ul style="list-style-type: none"> All interior doors will be replaced with new hollow core wood panel doors with new hardware (Falcon chrome finish or equal). |
| <ul style="list-style-type: none"> Install Mirrored Closet Doors as Required | <ul style="list-style-type: none"> Each closet will be retrofitted with sliding mirrored doors (White Finish). |

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| Apartment and Marina Renovation Template | 8T Lessee Proposal |
| d) Ceilings | |
| <ul style="list-style-type: none"> Removal of Existing "Cottage Cheese" Ceilings | <ul style="list-style-type: none"> All existing "cottage cheese" ceilings will be removed and prepared as smooth, painted ceilings. All asbestos containing materials (ACM) will be removed from the premises by a certified contactor according to the latest standards. |
| e) Moldings | |
| <ul style="list-style-type: none"> New | <ul style="list-style-type: none"> New decorative trim surrounding door jamb will be installed around all interior doors (3" wide, primed and painted gloss paint). |
| <ul style="list-style-type: none"> Existing | <ul style="list-style-type: none"> Replace all existing trim moldings as required. |
| f) Flooring | |
| <ul style="list-style-type: none"> Kitchen Flooring | <ul style="list-style-type: none"> All existing vinyl floorings will be removed and replaced with a new simulated wood floor or equal in the kitchen (Mannington Homestead simulated wood patterned flooring). |
| <ul style="list-style-type: none"> Bathroom Flooring | <ul style="list-style-type: none"> All existing vinyl floorings will be removed and replaced with new sheet vinyl floors and base in the bathrooms (Mannington Aurora). |
| <ul style="list-style-type: none"> Carpeting and Padding | <ul style="list-style-type: none"> All existing carpet and padding both in the hallways and the interiors of the apartments will be removed and replaced with new carpet and padding (Shaw HF708 Nylon Carpet, 32lbs face weight). |
| g) Phasing | |
| <ul style="list-style-type: none"> Unit Renovation | <ul style="list-style-type: none"> The renovation of all existing apartment units will be completed in three phases as outlined in the "Phasing Plan". <ul style="list-style-type: none"> Phasing Plan: <p>The Bay Club's building exterior, apartment units, and marina will be renovated simultaneously in three phases. The building exterior phasing will match the interior phasing. During each phase, the apartment units and boat slips not under construction will be operating and available for occupancy. It will take 21 months to renovate all of the apartment units, common areas, and building exterior. It will take 21 months to replace the existing 230 boat slips and 11 end ties with 207 new slips and 11 new end ties.</p> <p>(See Exhibit A-11, Schedule 1 of Exhibit A (2 pages) for planned phasing of apartment unit renovations)</p> |



| Apartment and Marina Renovation Template | 8T Lessee Proposal |
|---|---|
| <ul style="list-style-type: none"> ▪ Apartment Renovation | <ul style="list-style-type: none"> • <u>Phase One</u> <ul style="list-style-type: none"> • To be renovated <ul style="list-style-type: none"> ○ 61 apartment units ○ Fitness Center ○ Leasing Office ○ Recreation Room ○ Penthouse apartment unit above recreation room • 9 months to complete • <u>Phase Two</u> <ul style="list-style-type: none"> • 72 total apartment units to be renovated • 6 months to complete • <u>Phase Three</u> <ul style="list-style-type: none"> • 72 total apartment units to be renovated • 6 months to complete <p>(See Exhibit A-11, Schedule 1 of Exhibit A (2 pages) for planned phasing of apartment unit renovations)</p> |
| d) Clubhouse and Rental Building | |
| Clubhouse Exteriors | |
| <ul style="list-style-type: none"> ▪ Clubhouse & Leasing Office Building | <ul style="list-style-type: none"> • The existing tile mansard roof will be replaced with a new standing seam metal roof. • Tower elements will be added similar to those to be added to the 3-story apartment buildings (See Exhibit A9). • Recessed arches, recessed glass windows, new sand finished plaster, aluminum and tinted green glass balcony rails will be incorporated into the clubhouse building design, providing a more contemporary exterior elevation. |
| Clubhouse Interiors | |
| <ul style="list-style-type: none"> ▪ Clubhouse & Leasing Office Building | <ul style="list-style-type: none"> • A portion of the existing west wing of the clubhouse will be partially demolished to enable the driveway to be widened. The exterior wall will be relocated to widen the driveway from Tahiti Way to the parking on the Marina side. • The existing one-story wing will be renovated to include an entry lobby, leasing office, Apartment Manager and Dock Master office (all of which will be located on the ground floor). The existing club house wing which will remain, will house an enlarged |



| Apartment and Marina Renovation Template | 8T Lessee Proposal |
|---|--|
| <ul style="list-style-type: none"> Clubhouse & Leasing Office Building (con't) | <p>fitness center facing the pool and Marina, men's and women's bathrooms, and unisex sauna. The second floor of the existing club house wing will be accessed by an elevator and will contain a resident's lounge and multi-purpose room, together with a roof terrace with a fire pit overlooking the Marina. The second floor recreation deck (roof terrace) will receive glass handrails and will include a new traffic bearing surface. The existing 2nd story penthouse will be evaluated to determine if it can feasibly be converted from a large two-bedroom unit to a three-bedroom unit. The unit will be upgraded to the upgrade specifications of the balance of the Bay Club Apartments (See Exhibits A-8 & A-8a).</p> |
| e) Common Outdoor Areas | |
| <ul style="list-style-type: none"> Hardscape | <ul style="list-style-type: none"> All hardscape will be reviewed and replaced where reasonable, so as to give the impression of a totally new project. The existing waterfront promenade will be replaced, and the main entrance drive will be widened (See Exhibit A-4). <p>A portion of the existing leasing office will be demolished, so that the narrow 12' wide, existing driveway can be widened to a 22' wide driveway with landscaping on both sides. The existing paving material will be removed and a new stamped concrete surface with a smooth concrete edge band will be installed (See Exhibit A-8).</p> <ul style="list-style-type: none"> The asphalt will be resurfaced and parking will be re-stripped. |
| f) Parking | |
| <ul style="list-style-type: none"> Parking Lot | <ul style="list-style-type: none"> The asphalt will have a new slurry coating and the parking lot will be re-stripped to provide parking for the apartments and slips as required by County code. |
| g) Landscaping | |
| <ul style="list-style-type: none"> Landscaping | <ul style="list-style-type: none"> All existing landscaping will be reviewed, with particular attention given to those areas that are affected by the remodeling. The landscaping will be reviewed and upgraded with new shrubs, ground cover and trees. Most of the existing landscaping is concentrated along the Tahiti Way front setback. The existing tall Washingtonia Palms will be saved, as they are a prominent part of the streetscape. All other shrubs and trees will be selected with regard to how each plant enhances the elevation, and plants will be selected based on how the landscaping will grow with low water usage (See Exhibit L-2 for plant list). |




| Apartment and Marina Renovation Template | 8T Lessee Proposal |
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| <ul style="list-style-type: none"> ▪ Landscaping (con't) | <ul style="list-style-type: none"> • A detailed Landscape Plan prepared by a Landscape Architect will be provided for approval by County Beaches and Harbors and Planning Department (See Exhibits L-2, L-4, L-5, L-6, and L-8). |
| h) Signage | |
| <ul style="list-style-type: none"> ▪ Building Monument, ID and Amenity Signage | <ul style="list-style-type: none"> • Installation of all new custom property identification signage (See Exhibit A-9). Additionally, a new finder graphics package is to be installed throughout the property for better identification and access for residents, emergency crews and on-site guests. |
| i) Lighting | |
| <ul style="list-style-type: none"> ▪ Replace All Existing Exterior Lighting Fixtures. | <ul style="list-style-type: none"> • Landscape and area lighting on the property will be replaced to better enhance the new building exteriors and create better-lit paths for ingress and egress (See Exhibits A-4 & L-4). |
| j) Promenade | |
| <ul style="list-style-type: none"> ▪ Walkway Design and Materials | <ul style="list-style-type: none"> • The Waterfront Pedestrian Promenade, while meeting all the necessary requirements of fire department access, will be a pedestrian space first with paving treatments, landscape pockets and seating areas for view opportunities. The Grand Promenade walkway will be resurfaced with patterned colored concrete and accent paving and the fencing at the sea wall will be replaced with decorative metal fencing (See Exhibits A-4, L-4 & L-6). |
| <ul style="list-style-type: none"> ▪ Fencing Design and Materials | <ul style="list-style-type: none"> • A Code-compliant metal safety fence along the waterside portion of the Waterfront Pedestrian Promenade will integrate decorative accents at regular intervals in addition to accents at each boat slip entry ramp. Security gate enclosures will be provided for the dock gangway entrances (See Exhibit L-4). |
| <ul style="list-style-type: none"> ▪ Lighting Design and Materials | <ul style="list-style-type: none"> • Thematic lighting along the promenade will personalize the area and tie it to the overall design concept of the Bay Club project. Pedestrian scaled lighting fixtures with integral cut-off shields will reduce glare. The light standards will be replaced with standards recommended in the Design Guidelines. New benches and trash receptacles will be installed (See Exhibit L-4). |


| Apartment and Marina Renovation Template | 8T Lessee Proposal |
|--|---|
| <ul style="list-style-type: none"> ▪ Landscaping | <ul style="list-style-type: none"> • Palm trees with four-foot square tree grates will be planted to frame the slip gates, and additional palms will be planted at 40-feet on-center between slip gates (See Exhibits A-4 & L-6). |
| 2. Marina Renovation | |
| <ul style="list-style-type: none"> ▪ Replacement of Docks and Slips, Including Design and Materials | <ul style="list-style-type: none"> • Existing marina at Parcel 8T/9U, which accommodates 230 boat slips and 11 boat end-ties will be completely demolished and replaced by Lessee with a modern concrete marina containing 207 boat slips and 11 end ties that meets current marina standards and that is compliant with American with Disabilities Act ("ADA") and California Department of Boating & Waterways ("DBAW") standards. The new marina anchorage will be redeveloped with either commercially available or custom-designed concrete systems. The new marina will incorporate in its design a dock-side pump out system. (See Exhibits A-3, A-4 & A-10) |
| <ul style="list-style-type: none"> ▪ Dock Phasing Plan | <ul style="list-style-type: none"> • Phase One <ul style="list-style-type: none"> • 84 boat slips and 4 end ties are being removed and replaced with 76 new boat slips and 4 new end ties. • 7 months to complete • Phase Two <ul style="list-style-type: none"> • 90 boatslips and 4 end ties are being removed and replaced with 81 new boat slips and 4 new end ties • 7 months to complete • Phase Three <ul style="list-style-type: none"> • 58 boat slips and 3 end ties are being removed and replaced with 50 new boat slips and 3 new end ties • 7 months to complete <p>[See Exhibit A-12, Schedule 2 of Exhibit A (2 pages) for planned phasing of dock renovation]</p> |
| <ul style="list-style-type: none"> ▪ Renovated Boater Amenities | <ul style="list-style-type: none"> • Lessee will provide associated waterside (utility connections, dock boxes, and sewage pump-out facilities) and land-side (boater lounge, boater locker and restroom facilities, and boater parking) boater-related facilities. |
| | |

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|--|--|
| <i>Apartment and Marina Renovation Template</i> | <i>8T Lessee Proposal</i> |
| <ul style="list-style-type: none"> Retention of Marine Commercial Facilities | <ul style="list-style-type: none"> There are currently no marine commercial facilities on the parcel and none will be added. |
| B. PLANS & DRAWINGS | |
| a) Site Plan | |
| <ul style="list-style-type: none"> Reduced color site plans (8.5x11 or 11x17), showing work described above, including all structures, hardscape, promenade, landscaping and slips | <p>See Exhibit A, "Development Plan" dated 6/20/08</p> <p>Also see Exhibit A-1, "Existing Photos" dated 6/20/08</p> <p>Also see Exhibit A-2, "Context" dated 6/20/08</p> <p>Also see Exhibit A-3, "Existing Site Plan" dated 6/20/08</p> <p>Also see Exhibit A-4, "Proposed site and deck plan & promenade detail" dated 6/20/08</p> |

| | |
|--|--|
| Apartment and Marina Renovation Template | 8T Lessee Proposal |
| b) Building and Apartment Plans and Elevations | |
| <ul style="list-style-type: none"> A reduced color elevation (8.5x11 or 11x17) drawing that shows all new and/or renovated building and apartment plans and elevations | <p>See Exhibit A-5, "Apartment Buildings-Existing & proposed floor plans" dated 6/20/08</p> <p>Also see Exhibit A-6, "Existing & proposed unit plans" dated 6/20/08</p> <p>Also see Exhibit A-6a, "Existing & proposed unit plans" dated 6/20/08</p> <p>Also see Exhibit A-6b, "Existing & proposed unit plans" dated 6/20/08</p> <p>Also see Exhibit A-6c1, "Unit plan existing & proposed area calculations BLDG. A" dated 6/20/08</p> <p>Also see Exhibit A-6c2, "Unit plan existing & proposed area calculations BLDG. B" dated 6/20/08</p> <p>Also see Exhibit A-6d, "Plan view @ alcove" dated 6/20/08</p> <p>Also see Exhibit A-7, "Existing & proposed elevation & detail" dated 3/17/09</p> <p>Also see Exhibit A-7a, "Proposed building plan & elevations-Tahiti Way & Promenade/Marina" dated 3/17/09</p> <p>Also see Exhibit A-7b, "Wall section" dated 3/17/09</p> <p>Also see Exhibit A-8, "Clubhouse proposed ground floor plan" dated 2/14/08</p> <p>Also see Exhibit A-8a, "Clubhouse proposed 2nd floor plan" dated 6/20/08</p> <p>Also see Exhibit A-9, "Clubhouse existing photos & proposed elevations" dated 3/17/09</p> <p>Also see Exhibit A-11 "Schedule 1 to Exhibit A-Apartment Phasing Plan" dated 6/20/08 (2 pages)</p> <p>Also see Exhibit A-12 "Schedule 2 to Exhibit A-Dock Phasing Schedule" dated 6/20/08 (2 pages)</p> |

Initial 

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|---|---|
| Apartment and Marina Renovation Template | 8T Lessee Proposal |
| c) Landscaping Plan | |
| <ul style="list-style-type: none"> If not already included in the above materials | <p>See Exhibit A- L2, "Proposed plant list" dated 6/20/08</p> <p>Also See Exhibit A-L4, "Tahiti Way-typical planting" dated 3/17/09</p> <p>Also See Exhibit A- L5, "Screen planting" dated 6/20/08</p> <p>Also See Exhibit A-L6, "Landscape improvements" dated 6/20/08</p> <p>Also See Exhibit A-L8, "Hanging planter" dated 6/20/08</p> |
| d) Dock Construction Plan | |
| <ul style="list-style-type: none"> Dock construction plan, including physical layout of docks and slips | <p>See Exhibit A-10, "Proposed dock layout" dated 6/20/08; number of slips, length of slips, and slip configuration subject to all required approvals that may include those of the Army Corp of Engineering, California Coastal Commission, and Los Angeles County Department of Regional Planning.</p> <p>See Exhibit A-10a, "Dock length schedule" dated 6/20/08</p> |

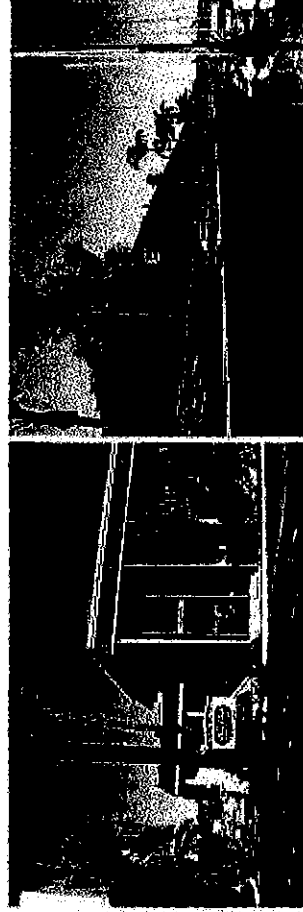
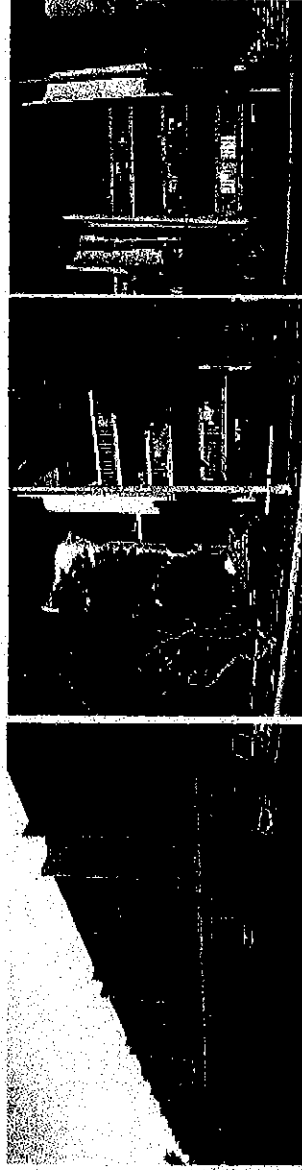
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|---|---|--------------------|--------------|
| Apartment and Marina Renovation Template | | 8T Lessee Proposal | |
| C. Budget | | | |
| 1) Budget Worksheet | | | |
| ▪ Estimated Cost for All of the Work Agreed Upon | HARD COSTS | | |
| | APARTMENT RENOVATION | | \$12,042,030 |
| | MARINA RENOVATION | | \$7,941,442 |
| | TOTAL HARD COSTS | | \$19,983,472 |
| | SOFT COSTS | | |
| | ARCHITECTS, ENGINEERS, AND CONSULTANTS | | \$500,000 |
| | PERMITS AND FESS | | \$200,000 |
| | CONSTRUCTION INSURANCE (covered under building operating expenses) | | \$0 |
| | LOAN INTEREST CARRY (*\$12,500,000 @ 7.5% over 2 years) | | \$1,875,000 |
| | MARKETING AND LEASING | | \$100,000 |
| | LEGAL AND OTHER ENTITLEMENT EXPENSES | | \$250,000 |
| | TOTAL SOFT COSTS | | \$2,925,000 |
| | CONTINGENCY (5% of hard and soft costs) | | \$1,145,424 |
| | DEVELOPER FEE (5% of hard costs) | | \$999,174 |
| | TOTAL RENOVATION BUDGET | | \$25,053,069 |



Exhibit A-1

Parcel 8-Existing Photos dated 6/20/08



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| EXHIBIT A-1 | PARCEL 87 THE BAY CLUB-MA |
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Applied Technology Resources, Inc. (ATRI) is a leading provider of technology solutions for the construction industry. ATRI's services include project management, cost estimation, and software development. ATRI is currently seeking qualified individuals for the following positions:

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1914

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1914

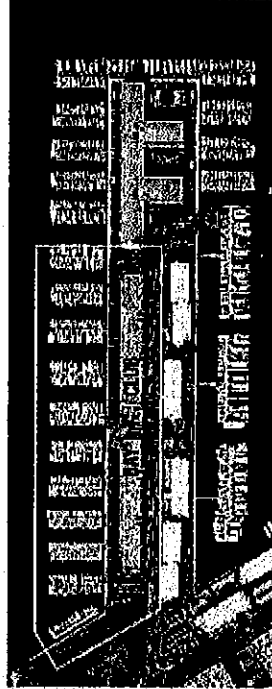
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Page 16

Page 16

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Parcel 8-Context dated 6/20/08



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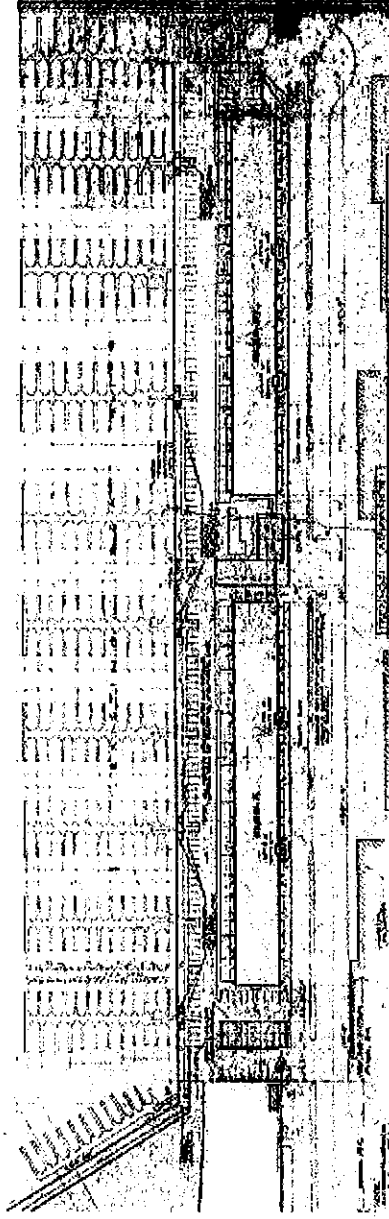
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Exhibit A-3

Parcel 8-Existing Site Plan dated 6/20/08



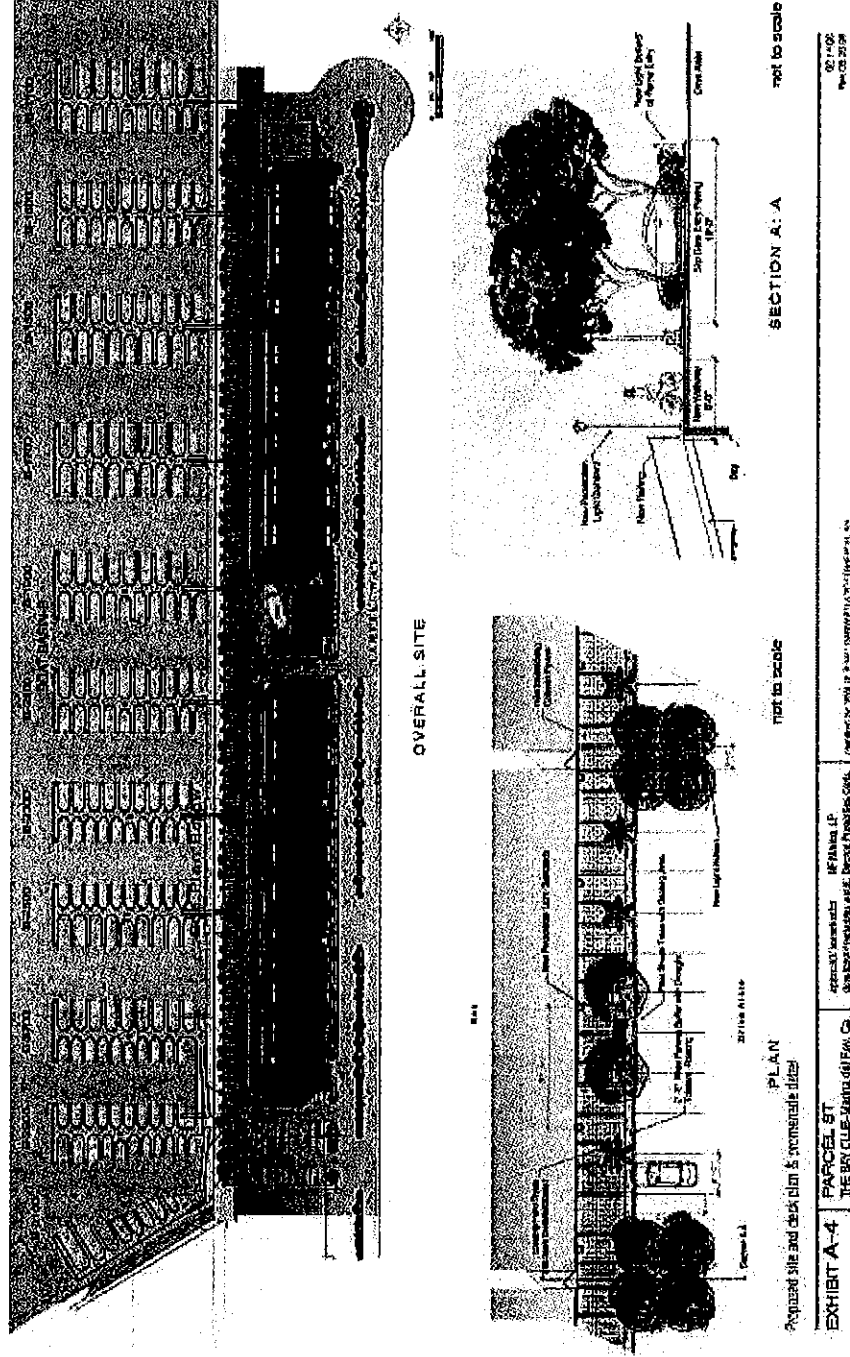
Existing site plan

EXHIBIT A-3 | PARCEL 8-1 | THE BAY CLUB-Medina del Rey, CA | PROJECT CONSULTANT: JF BROWN, LP | PREPARED BY: JF BROWN, LP | DATE: 06/20/08

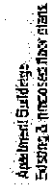
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Exhibit A-4

Parcel 8 - Proposed site and deck plan & promenade detail dated 6/20/08



Parcel 8 – Apartment Buildings-Existing & proposed floor plans dated 6/20/08



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| EXHIBIT A-5 | PAGE 57 |
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U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C.

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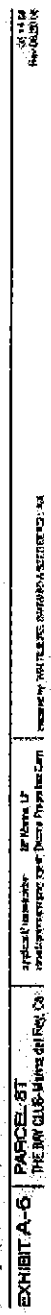
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Signature

Parcel 8 – Existing & proposed unit plans dated 6/20/08



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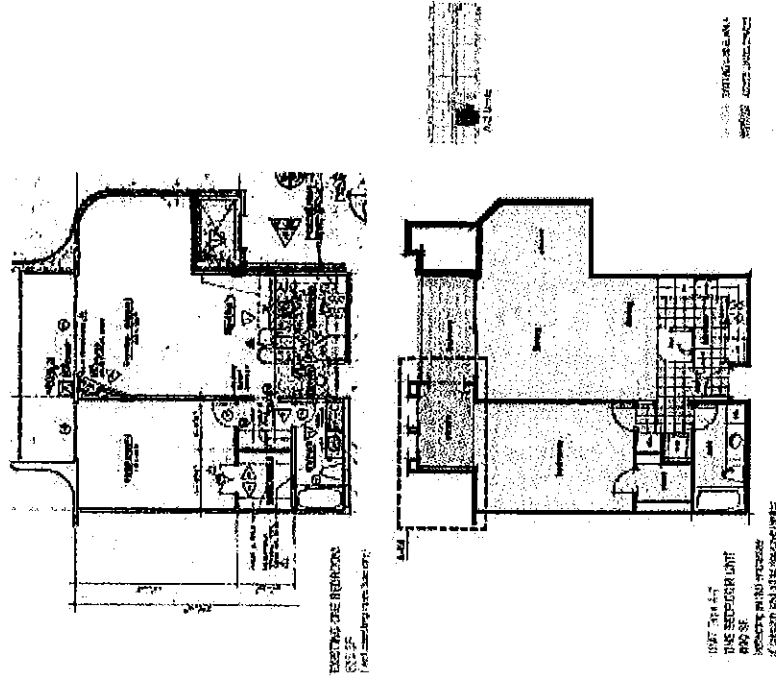
Parcel 8 – Apartment Buildings-Existing & proposed floor plans dated 6/20/08



Initial

Exhibit A-6b

Parcel 8 – Apartment Buildings-Existing & proposed floor plans dated 6/20/08



Existing & proposed unit plans

EXHIBIT A-6b PARCEL 8
THE NEW CLUB-MEDIAN DELIVERY, Co

4900 West 10th Ave. SE, Suite 100
Denver, Colorado 80202

4900 West 10th Ave. SE, Suite 100
Denver, Colorado 80202

06/20/08
Rev. 06/20/08


Initial 

Exhibit A-6c1

Parcel 8 – Apartment Buildings-Existing & proposed floor plans dated 6/20/08

| NORTHWEST | | | | NORTH | | | | NORTHEAST | | | |
|-----------|----------|----------|------------|-------|----------|----------|------------|-----------|----------|----------|------------|
| UNIT | ENTRANCE | EXISTING | ADDITIONAL | UNIT | ENTRANCE | EXISTING | ADDITIONAL | UNIT | ENTRANCE | EXISTING | ADDITIONAL |
| | | | | | | | | | | | |
| 101 | 101 | 101 | 101 | 101 | 101 | 101 | 101 | 101 | 101 | 101 | 101 |
| 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 | 102 |
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Unit plan existing & proposed area calculations BLDG. A

EXHIBIT A-6c1 PARCEL 81
THE BAY CLUB-Marina del Rey, Ca

Project: Marina del Rey
Developer: Marina del Rey Properties Corp.

Project: Marina del Rey
Developer: Marina del Rey Properties Corp.

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Rev. 02/25/08

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Parcel 8 – Apartment Buildings-Existing & proposed floor plans dated 6/20/08

What's new at the 8

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Page 25

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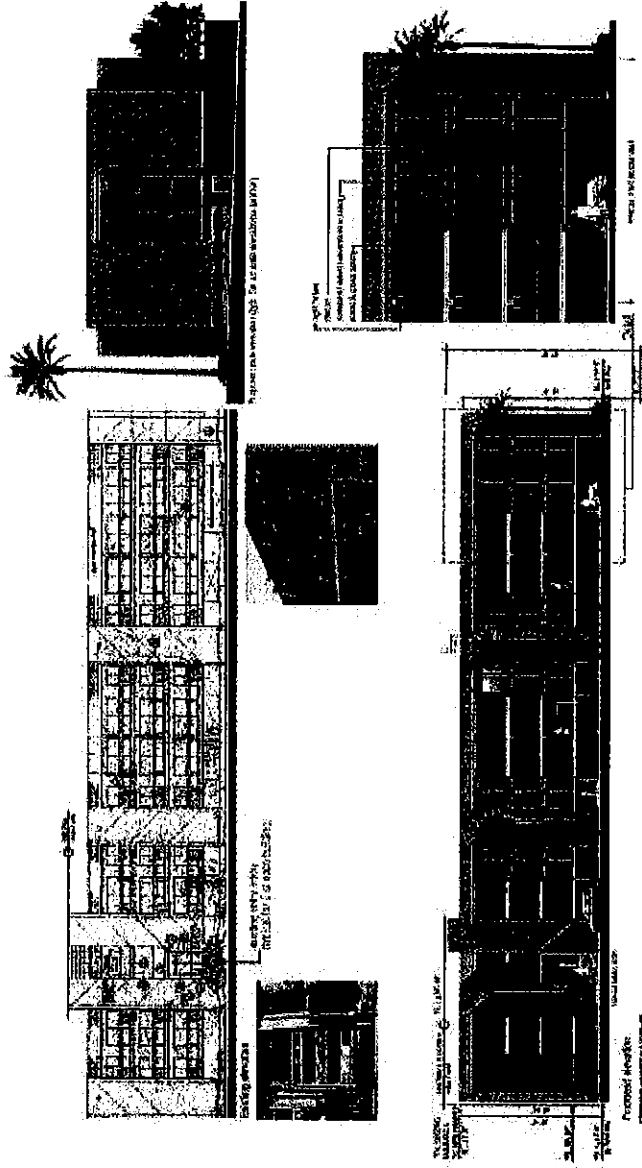
Parcel 8 – Plan view @ alcove dated 6/20/08



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Exhibit A-7

Parcel 8 – Existing & proposed elevation & detail dated 3/17/09



Existing & proposed elevation & detail

EXHIBIT A-7 | PARCEL 8 |

THE DAY CLUB/Venue Collection Co.

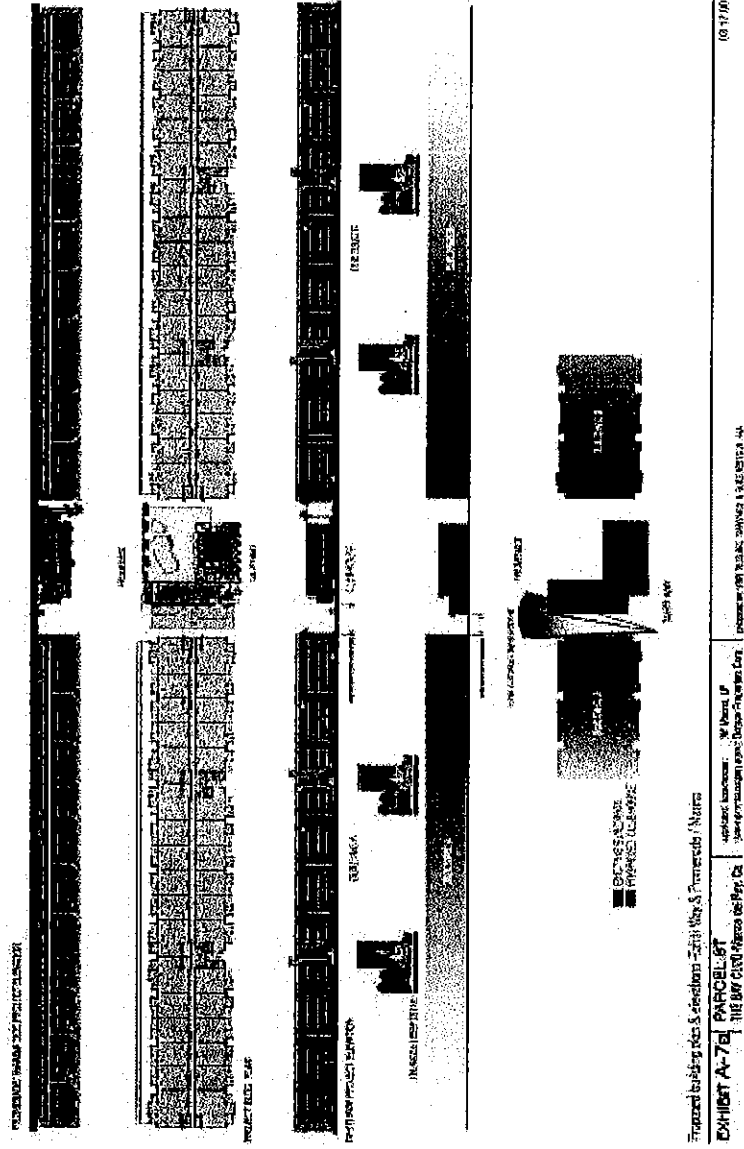
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Exhibit A-7a

Parcel 8 – Proposed building plan & elevations-Tahiti Way & Promenade/ Marina dated 3/17/09



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Parcel 8 – Wall section dated 3/17/09



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Parcel 8 – Clubhouse proposed ground floor plan dated 6/20/08

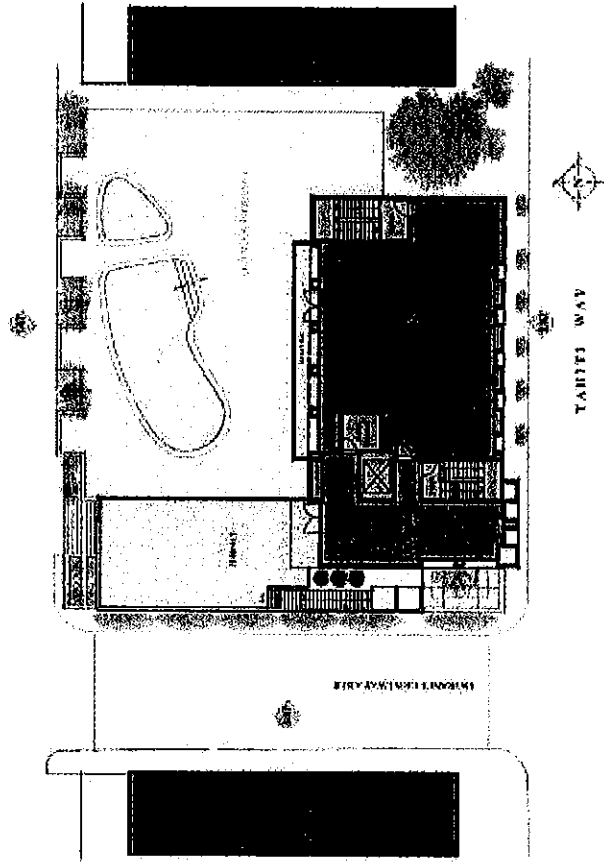


Page 30



Exhibit A-8a

Parcel 8 – Clubhouse proposed second floor plan dated 6/20/08



Clubhouse proposed 2nd floor plan

EXHIBIT A-8a

PARCEL 8

THE BOY CLUBS OF AMERICA, INC.

APPLICANT'S NAME

PROJECT NAME

PROJECT ADDRESS

PROJECT CITY

PROJECT STATE

PROJECT ZIP

PROJECT PHONE

PROJECT FAX

PROJECT EMAIL

PROJECT WEBSITE

PROJECT CONTACT

PROJECT DATE

PROJECT STATUS

PROJECT NOTES

PROJECT COMMENTS

PROJECT ACTION

PROJECT REVIEW

PROJECT APPROVAL

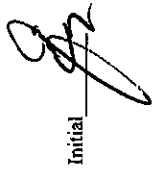
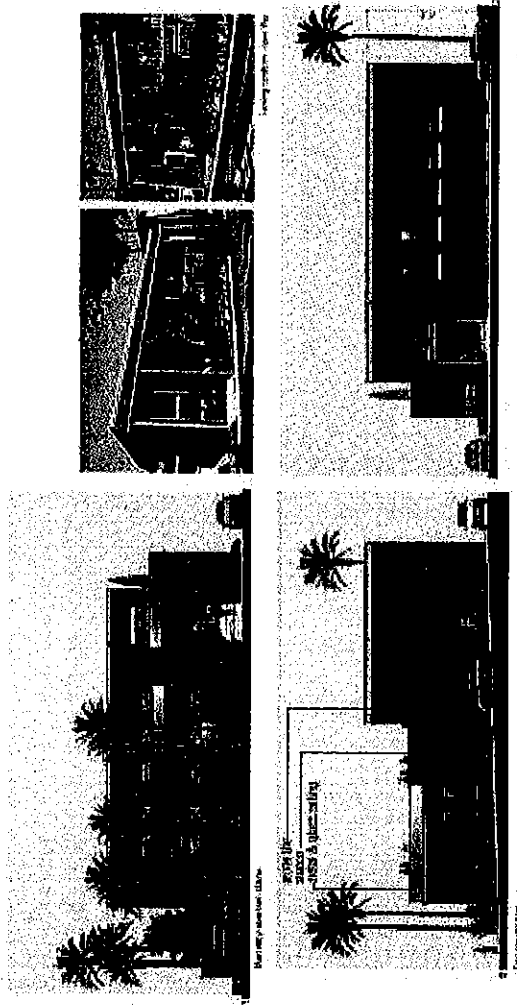
Initial 

Exhibit A-9

Parcel 8 – Clubhouse existing photos & proposed elevations dated 3/17/09



Clubhouse existing photos & proposed elevations


EXHIBIT A-9 PARCEL 8T

THE SUN CLUBHOUSE OF PALM BEACH

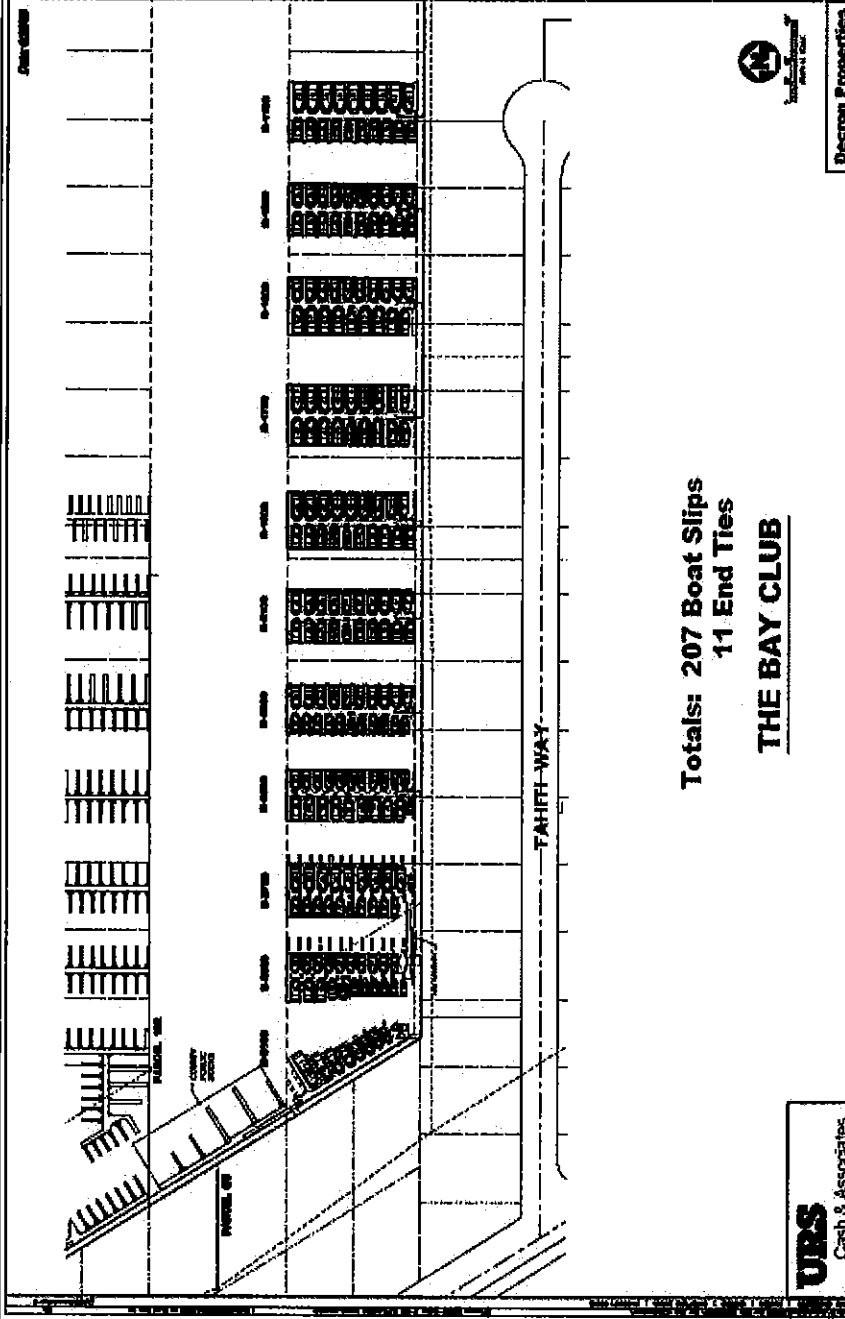
ARCHITECT: HENNINGSEN & HENNINGSEN, LLP

DATE: 3/17/09

Exhibit A-10


Initial 

Parcel 8 – Proposed dock layout dated 6/20/08



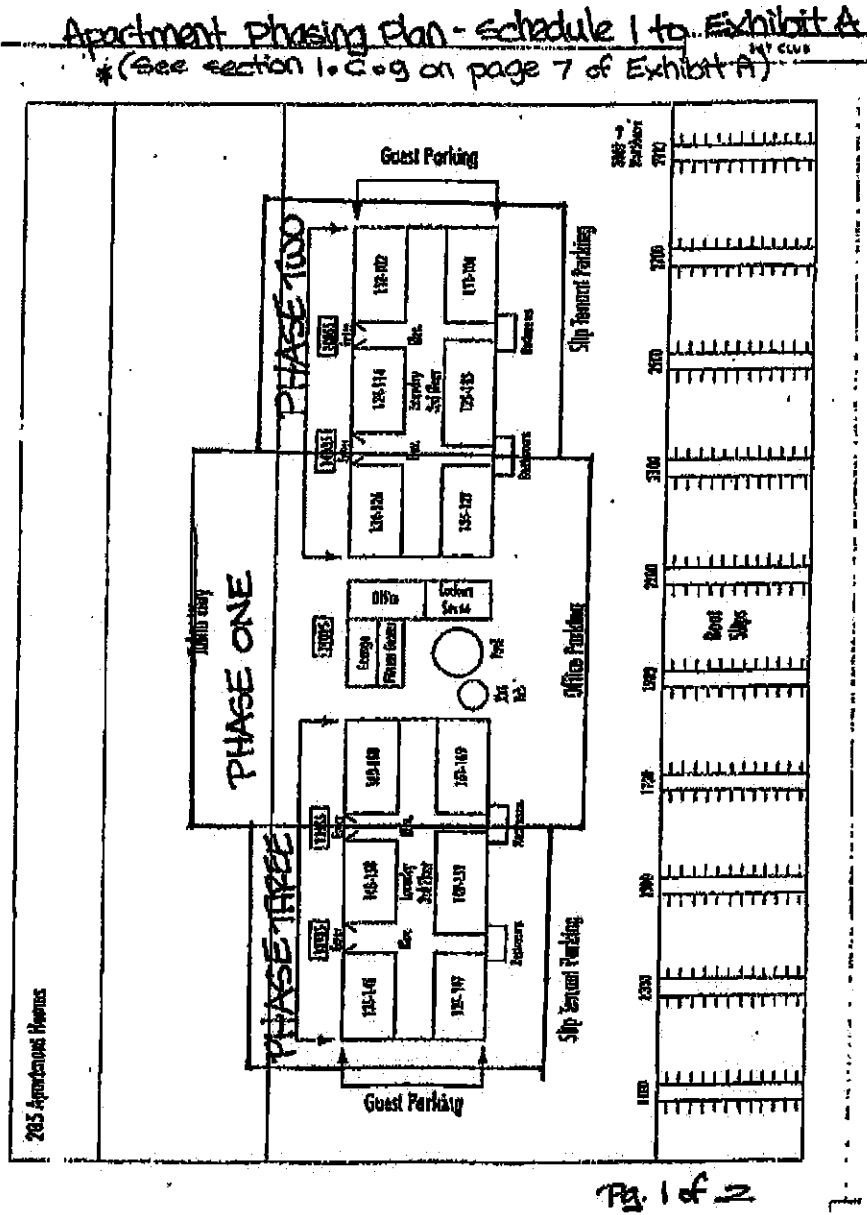
6/20/08

Exhibit A-10a

Initial 

Parcel 8 – Dock length schedule dated 6/20/08

| SUP Length | Total | | Overall | |
|---------------|-------|--------|---------|--------|
| | Qty | Length | Qty | Length |
| 20 | 0 | | 0 | |
| 22 | 1 | 22 | 1 | 22 |
| 24 | 1 | 24 | 1 | 24 |
| 26 | 1 | 26 | 1 | 26 |
| 28 | 1 | 28 | 1 | 28 |
| 30 | 1 | 30 | 1 | 30 |
| 32 | 1 | 32 | 1 | 32 |
| 34 | 1 | 34 | 1 | 34 |
| 36 | 1 | 36 | 1 | 36 |
| 38 | 1 | 38 | 1 | 38 |
| 40 | 1 | 40 | 1 | 40 |
| 42 | 1 | 42 | 1 | 42 |
| 44 | 1 | 44 | 1 | 44 |
| 46 | 1 | 46 | 1 | 46 |
| 48 | 1 | 48 | 1 | 48 |
| 50 | 1 | 50 | 1 | 50 |
| 52 | 1 | 52 | 1 | 52 |
| 54 | 1 | 54 | 1 | 54 |
| 56 | 1 | 56 | 1 | 56 |
| 58 | 1 | 58 | 1 | 58 |
| 60 | 1 | 60 | 1 | 60 |
| 62 | 1 | 62 | 1 | 62 |
| 64 | 1 | 64 | 1 | 64 |
| 66 | 1 | 66 | 1 | 66 |
| 68 | 1 | 68 | 1 | 68 |
| 70 | 1 | 70 | 1 | 70 |
| 72 | 1 | 72 | 1 | 72 |
| 74 | 1 | 74 | 1 | 74 |
| 76 | 1 | 76 | 1 | 76 |
| 78 | 1 | 78 | 1 | 78 |
| 80 | 1 | 80 | 1 | 80 |
| 82 | 1 | 82 | 1 | 82 |
| 84 | 1 | 84 | 1 | 84 |
| 86 | 1 | 86 | 1 | 86 |
| 88 | 1 | 88 | 1 | 88 |
| 90 | 1 | 90 | 1 | 90 |
| 92 | 1 | 92 | 1 | 92 |
| 94 | 1 | 94 | 1 | 94 |
| 96 | 1 | 96 | 1 | 96 |
| 98 | 1 | 98 | 1 | 98 |
| 100 | 1 | 100 | 1 | 100 |
| 102 | 1 | 102 | 1 | 102 |
| 104 | 1 | 104 | 1 | 104 |
| 106 | 1 | 106 | 1 | 106 |
| 108 | 1 | 108 | 1 | 108 |
| 110 | 1 | 110 | 1 | 110 |
| 112 | 1 | 112 | 1 | 112 |
| 114 | 1 | 114 | 1 | 114 |
| 116 | 1 | 116 | 1 | 116 |
| 118 | 1 | 118 | 1 | 118 |
| 120 | 1 | 120 | 1 | 120 |
| 122 | 1 | 122 | 1 | 122 |
| 124 | 1 | 124 | 1 | 124 |
| 126 | 1 | 126 | 1 | 126 |
| 128 | 1 | 128 | 1 | 128 |
| 130 | 1 | 130 | 1 | 130 |
| 132 | 1 | 132 | 1 | 132 |
| 134 | 1 | 134 | 1 | 134 |
| 136 | 1 | 136 | 1 | 136 |
| 138 | 1 | 138 | 1 | 138 |
| 140 | 1 | 140 | 1 | 140 |
| 142 | 1 | 142 | 1 | 142 |
| 144 | 1 | 144 | 1 | 144 |
| 146 | 1 | 146 | 1 | 146 |
| 148 | 1 | 148 | 1 | 148 |
| 150 | 1 | 150 | 1 | 150 |
| 152 | 1 | 152 | 1 | 152 |
| 154 | 1 | 154 | 1 | 154 |
| 156 | 1 | 156 | 1 | 156 |
| 158 | 1 | 158 | 1 | 158 |
| 160 | 1 | 160 | 1 | 160 |
| 162 | 1 | 162 | 1 | 162 |
| 164 | 1 | 164 | 1 | 164 |
| 166 | 1 | 166 | 1 | 166 |
| 168 | 1 | 168 | 1 | 168 |
| 170 | 1 | 170 | 1 | 170 |
| 172 | 1 | 172 | 1 | 172 |
| 174 | 1 | 174 | 1 | 174 |
| 176 | 1 | 176 | 1 | 176 |
| 178 | 1 | 178 | 1 | 178 |
| 180 | 1 | 180 | 1 | 180 |
| 182 | 1 | 182 | 1 | 182 |
| 184 | 1 | 184 | 1 | 184 |
| 186 | 1 | 186 | 1 | 186 |
| 188 | 1 | 188 | 1 | 188 |
| 190 | 1 | 190 | 1 | 190 |
| 192 | 1 | 192 | 1 | 192 |
| 194 | 1 | 194 | 1 | 194 |
| 196 | 1 | 196 | 1 | 196 |
| 198 | 1 | 198 | 1 | 198 |
| 200 | 1 | 200 | 1 | 200 |
| 202 | 1 | 202 | 1 | 202 |
| 204 | 1 | 204 | 1 | 204 |
| 206 | 1 | 206 | 1 | 206 |
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| 212 | 1 | 212 | 1 | 212 |
| 214 | 1 | 214 | 1 | 214 |
| 216 | 1 | 216 | 1 | 216 |
| 218 | 1 | 218 | 1 | 218 |
| 220 | 1 | 220 | 1 | 220 |
| 222 | 1 | 222 | 1 | 222 |
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| 226 | 1 | 226 | 1 | 226 |
| 228 | 1 | 228 | 1 | 228 |
| 230 | 1 | 230 | 1 | 230 |
| 232 | 1 | 232 | 1 | 232 |
| 234 | 1 | 234 | 1 | 234 |
| 236 | 1 | 236 | 1 | 236 |
| 238 | 1 | 238 | 1 | 238 |
| 240 | 1 | 240 | 1 | 240 |
| 242 | 1 | 242 | 1 | 242 |
| 244 | 1 | 244 | 1 | 244 |
| 246 | 1 | 246 | 1 | 246 |
| 248 | 1 | 248 | 1 | 248 |
| 250 | 1 | 250 | 1 | 250 |
| 252 | 1 | 252 | 1 | 252 |
| 254 | 1 | 254 | 1 | 254 |
| 256 | 1 | 256 | 1 | 256 |
| 258 | 1 | 258 | 1 | 258 |
| 260 | 1 | 260 | 1 | 260 |
| 262 | 1 | 262 | 1 | 262 |
| 264 | 1 | 264 | 1 | 264 |
| 266 | 1 | 266 | 1 | 266 |
| 268 | 1 | 268 | 1 | 268 |
| 270 | 1 | 270 | 1 | 270 |
| 272 | 1 | 272 | 1 | 272 |
| 274 | 1 | 274 | 1 | 274 |
| 276 | 1 | 276 | 1 | 276 |
| 278 | 1 | 278 | 1 | 278 |
| 280 | 1 | 280 | 1 | 280 |
| 282 | 1 | 282 | 1 | 282 |
| 284 | 1 | 284 | 1 | 284 |
| 286 | 1 | 286 | 1 | 286 |
| 288 | 1 | 288 | 1 | 288 |
| 290 | 1 | 290 | 1 | 290 |
| 292 | 1 | 292 | 1 | 292 |
| 294 | 1 | 294 | 1 | 294 |
| 296 | 1 | 296 | 1 | 296 |
| 298 | 1 | 298 | 1 | 298 |
| 300 | 1 | 300 | 1 | 300 |
| 302 | 1 | 302 | 1 | 302 |
| 304 | 1 | 304 | 1 | 304 |
| 306 | 1 | 306 | 1 | 306 |
| 308 | 1 | 308 | 1 | 308 |
| 310 | 1 | 310 | 1 | 310 |
| 312 | 1 | 312 | 1 | 312 |
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| 316 | 1 | 316 | 1 | 316 |
| 318 | 1 | 318 | 1 | 318 |
| 320 | 1 | 320 | 1 | 320 |
| 322 | 1 | 322 | 1 | 322 |
| 324 | 1 | 324 | 1 | 324 |
| 326 | 1 | 326 | 1 | 326 |
| 328 | 1 | 328 | 1 | 328 |
| 330 | 1 | 330 | 1 | 330 |
| 332 | 1 | 332 | 1 | 332 |
| 334 | 1 | 334 | 1 | 334 |
| 336 | 1 | 336 | 1 | 336 |
| 338 | 1 | 338 | 1 | 338 |
| 340 | 1 | 340 | 1 | 340 |
| 342 | 1 | 342 | 1 | 342 |
| 344 | 1 | 344 | 1 | 344 |
| 346 | 1 | 346 | 1 | 346 |
| 348 | 1 | 348 | 1 | 348 |
| 350 | 1 | 350 | 1 | 350 |
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| 354 | 1 | 354 | 1 | 354 |
| 356 | 1 | 356 | 1 | 356 |
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| 360 | 1 | 360 | 1 | 360 |
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| 366 | 1 | 366 | 1 | 366 |
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| 372 | 1 | 372 | 1 | 372 |
| 374 | 1 | 374 | 1 | 374 |
| 376 | 1 | 376 | 1 | 376 |
| 378 | 1 | 378 | 1 | 378 |
| 380 | 1 | 380 | 1 | 380 |
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| 384 | 1 | 384 | 1 | 384 |
| 386 | 1 | 386 | 1 | 386 |
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| 390 | 1 | 390 | 1 | 390 |
| 392 | 1 | 392 | 1 | 392 |
| 394 | 1 | 394 | 1 | 394 |
| 396 | 1 | 396 | 1 | 396 |
| 398 | 1 | 398 | 1 | 398 |
| 400 | 1 | 400 | 1 | 400 |
| 402 | 1 | 402 | 1 | 402 |
| 404 | 1 | 404 | 1 | 404 |
| 406 | 1 | 406 | 1 | 406 |
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| 410 | 1 | 410 | 1 | 410 |
| 412 | 1 | 412 | 1 | 412 |
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| 416 | 1 | 416 | 1 | 416 |
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| 428 | 1 | 428 | 1 | 428 |
| 430 | 1 | 430 | 1 | 430 |
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| 436 | 1 | 436 | 1 | 436 |
| 438 | 1 | 438 | 1 | 438 |
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| 446 | 1 | 446 | 1 | 446 |
| 448 | 1 | 448 | 1 | 448 |
| 450 | 1 | 450 | 1 | 450 |
| 452 | 1 | 452 | 1 | 452 |
| 454 | 1 | 454 | 1 | 454 |
| 456 | 1 | 456 | 1 | 456 |
| 458 | 1 | 458 | 1 | 458 |
| 460 | 1 | 460 | 1 | 460 |
| 462 | 1 | 462 | 1 | 462 |
| 464 | 1 | 464 | 1 | 464 |
| 466 | 1 | 466 | 1 | 466 |
| 468 | 1 | 468 | 1 | 468 |
| 470 | 1 | 470 | 1 | 470 |
| 472 | 1 | 472 | 1 | 472 |
| 474 | 1 | 474 | 1 | 474 |
| 476 | 1 | 476 | 1 | 476 |
| 478 | 1 | 478 | 1 | 478 |
| 480 | 1 | 480 | 1 | 480 |
| 482 | 1 | 482 | 1 | 482 |
| 484 | 1 | 484 | 1 | 484 |
| 486 | 1 | 486 | 1 | 486 |
| 488 | 1 | 488 | 1 | 488 |
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| 492 | 1 | 492 | 1 | 492 |
| 494 | 1 | 494 | 1 | 494 |
| 496 | 1 | 496 | 1 | 496 |
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| 500 | 1 | 500 | 1 | 500 |
| 502 | 1 | 502 | 1 | 502 |
| 504 | 1 | 504 | 1 | 504 |
| 506 | 1 | 506 | 1 | 506 |
| 508 | 1 | 508 | 1 | 508 |
| 510 | 1 | 510 | 1 | 510 |
| 512 | 1 | 512 | 1 | 512 |
| 514 | 1 | 514 | 1 | 514 |
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| 518 | 1 | 518 | 1 | 518 |
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| 526 | 1 | 526 | 1 | 526 |
| 528 | 1 | 528 | 1 | 528 |
| 530 | 1 | 530 | 1 | 530 |
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| 544 | 1 | 544 | 1 | 544 |
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| 548 | 1 | 548 | 1 | 548 |
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| 552 | 1 | 552 | 1 | 552 |
| 554 | 1 | 554 | 1 | 554 |
| 556 | 1 | 556 | 1 | 556 |
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| 560 | 1 | 560 | 1 | 560 |
| 562 | 1 | 562 | 1 | 562 |
| 564 | 1 | 564 | 1 | 564 |
| 566 | 1 | 566 | 1 | 566 |
| 568 | 1 | 568 | 1 | 568 |
| 570 | 1 | 570 | 1 | 570 |
| 572 | 1 | 572 | 1 | 572 |
| 574 | 1 | 574 | 1 | 574 |
| 576 | 1 | 576 | 1 | 576 |
| 578 | 1 | 578 | 1 | 578 |
| 580 | 1 | 580 | 1 | 580 |
| 582 | 1 | 582 | 1 | 582 |
| 584 | 1 | 584 | 1 | 584 |
| 586 | 1 | 586 | 1 | 586 |
| 588 | 1 | 588 | 1 | 588 |
| 590 | 1 | 590 | 1 | 590 |
| 592 | 1 | 592 | 1 | 592 |
| 594 | 1 | 594 | 1 | 594 |
| 596 | 1 | 596 | 1 | 596 |
| 598 | 1 | 598 | 1 | 598 |
| 600 | 1 | 600 | 1 | 600 |
| 602 | 1 | 602 | 1 | 602 |
| 604 | 1 | 604 | 1 | 604 |
| 606 | 1 | 606 | 1 | 606 |
| 608 | 1 | 608 | 1 | 608 |
| 610 | 1 | 610 | 1 | 610 |
| 612 | 1 | 612 | 1 | 612 |
| 614 | 1 | 614 | 1 | 614 |
| 616 | 1 | 616 | 1 | 616 |
| 618 | 1 | 618 | 1 | 618 |
| 620 | 1</ | | | |



6/20/08

Exhibit A-11

Initial JS

Parcel 8 - Schedule 1 to Exhibit A-Apartment Phasing Plan" dated 6/20/08 (2 pages)

BA1 LUB APARTMENT RENOVATION SCHEDULE

| PHASE 1 - Building A | | | | | | | | | | | |
|----------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|----------------|--|
| 126 | 127 | 128 | 129 | 130 | 131 | 132 | 133 | 134 | 135 | | |
| 226 | 227 | 228 | 229 | 230 | 231 | 232 | 233 | 234 | 235 | | |
| 326 | 327 | 328 | 329 | 330 | 331 | 332 | 333 | 334 | 335 | | |
| | | | | | | | | | | 30 Total Units | |

| PHASE 1 - Building B | | | | | | | | | | | |
|----------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|----------------|--|
| 160 | 161 | 162 | 163 | 164 | 165 | 166 | 167 | 168 | 169 | | |
| 260 | 261 | 262 | 263 | 264 | 265 | 266 | 267 | 268 | 269 | | |
| 360 | 361 | 362 | 363 | 364 | 365 | 366 | 367 | 368 | 369 | | |
| | | | | | | | | | | 30 Total Units | |

61 TOTAL UNITS TO BE RENOVATED IN PHASE 1 (INCLUDES PENTHOUSE UNIT LOCATED ABOVE THE RECREATION ROOM)

| PHASE 2 - Building A | | | | | | | | | | | |
|----------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|----------------|-----|
| 181 | 182 | 183 | 184 | 185 | 186 | 187 | 188 | 189 | 190 | 191 | 192 |
| 281 | 282 | 283 | 284 | 285 | 286 | 287 | 288 | 289 | 290 | 291 | 292 |
| 381 | 382 | 383 | 384 | 385 | 386 | 387 | 388 | 389 | 390 | 391 | 392 |
| | | | | | | | | | | 36 Total Units | |

| PHASE 2 - Building B | | | | | | | | | | | |
|----------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|----------------|-----|
| 114 | 115 | 116 | 117 | 118 | 119 | 120 | 121 | 122 | 123 | 124 | 125 |
| 214 | 215 | 216 | 217 | 218 | 219 | 220 | 221 | 222 | 223 | 224 | 225 |
| 314 | 315 | 316 | 317 | 318 | 319 | 320 | 321 | 322 | 323 | 324 | 325 |
| | | | | | | | | | | 36 Total Units | |

72 TOTAL UNITS TO BE RENOVATED IN PHASE 2

| PHASE 3 - Building A | | | | | | | | | | | |
|----------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|----------------|-----|
| 108 | 109 | 110 | 111 | 112 | 113 | 114 | 115 | 116 | 117 | 118 | 119 |
| 208 | 209 | 210 | 211 | 212 | 213 | 214 | 215 | 216 | 217 | 218 | 219 |
| 308 | 309 | 310 | 311 | 312 | 313 | 314 | 315 | 316 | 317 | 318 | 319 |
| | | | | | | | | | | 36 Total Units | |

| PHASE 3 - Building B | | | | | | | | | | | |
|----------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|----------------|-----|
| 136 | 137 | 138 | 139 | 140 | 141 | 142 | 143 | 144 | 145 | 146 | 147 |
| 236 | 237 | 238 | 239 | 240 | 241 | 242 | 243 | 244 | 245 | 246 | 247 |
| 336 | 337 | 338 | 339 | 340 | 341 | 342 | 343 | 344 | 345 | 346 | 347 |
| | | | | | | | | | | 36 Total Units | |

72 TOTAL UNITS TO BE RENOVATED IN PHASE 3

pg 2 of 2

Apartment Phasing plan - Schedule 1 to Exhibit A
 *(see section 1.c.g on page 7 of Exhibit A)

6/20/08


Initial 

Exhibit A-12

Parcel 8 - Schedule 2 to Exhibit A-Dock Phasing Schedule" dated 6/20/08 (2 pages)

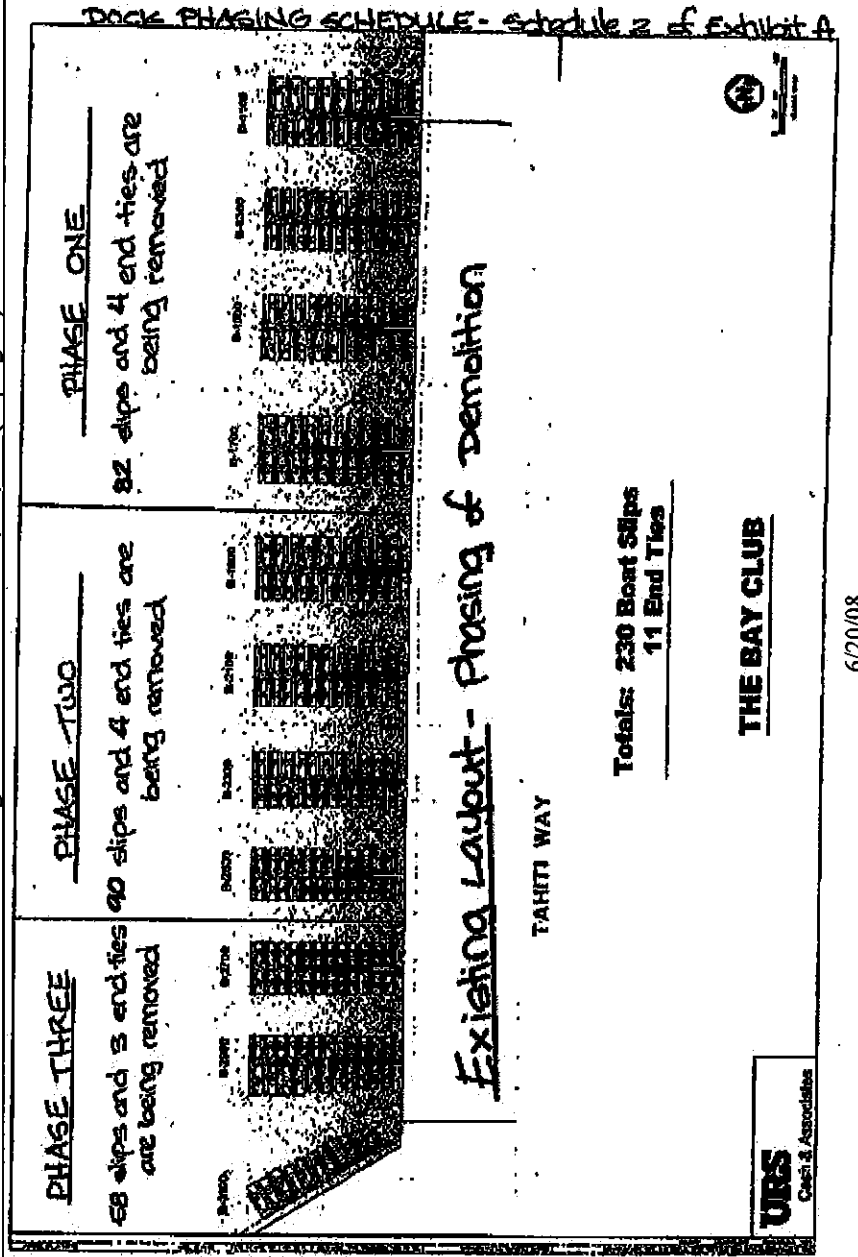
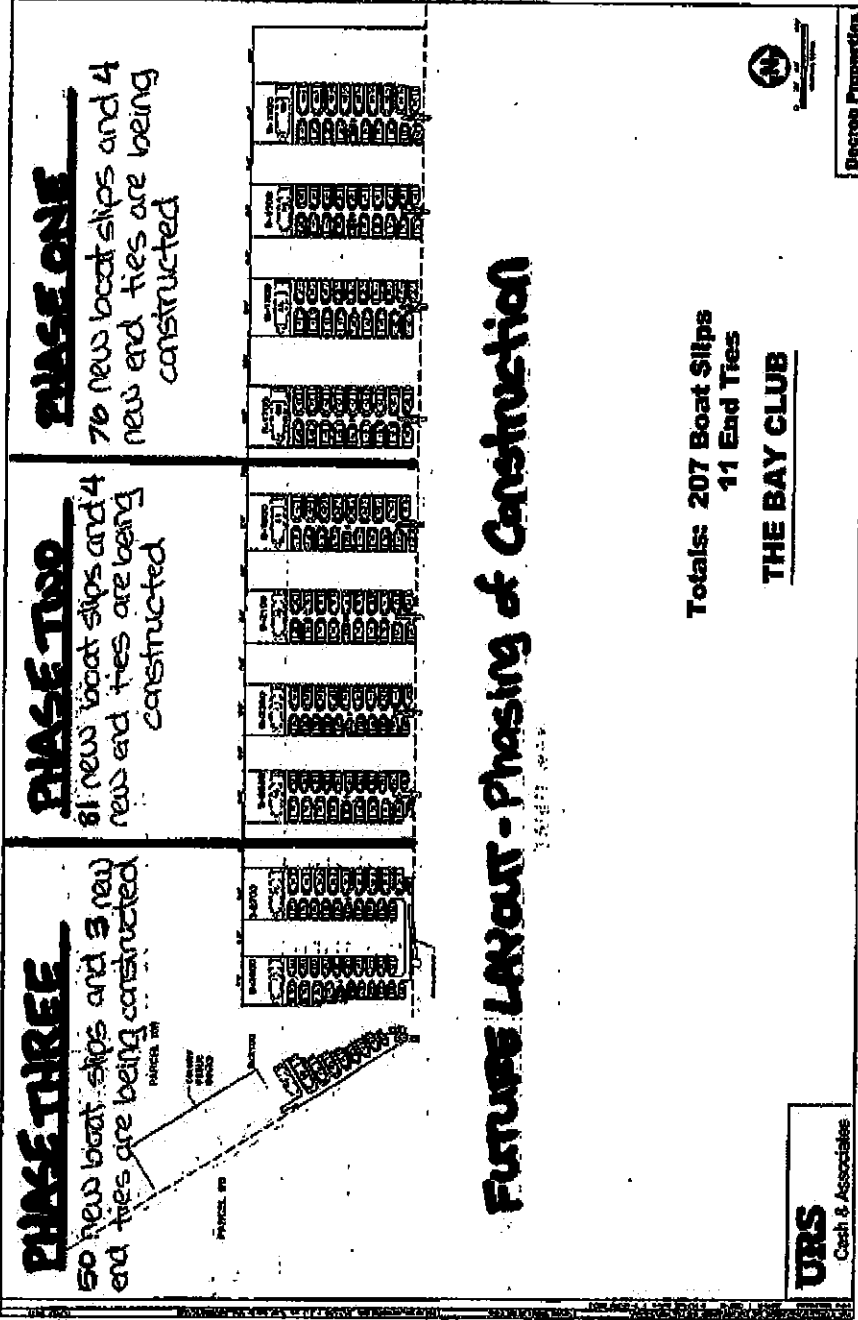



Exhibit A-12

Initial JS



Initial 

Parcel 8 – Proposed plant list dated 6/20/08

Subject 1

THE BAY CLUB-18th and Park, Ch.

2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765 2766 2767 2768 2769 2770 2771 2772 2773 2774 2775 2776 2777 2778 2779 2780 2781 2782 2783 2784 2785 2786 2787 2788 2789 2790 2791 2792 2793 2794 2795 2796 2797 2798 2799 2800 2801 2802 2803 2804 2805 2806 2807 2808 2809 2810 2811 2812 2813 2814 2815 2816 2817 2818

THE UNIVERSITY OF CHICAGO PRESS

Size: DN200

Filename: exhibit A to the lease nov19-09rev. 110409
Page 39

Initial

Parcel 8 – Tahiti Way-typical planting dated 3/17/09



| | |
|-------------|---|
| EXHIBIT 2-4 | PARCEL 67, THE DAY COUNTRY INN, 67, 68 |
|-------------|---|

47 North 2nd Street, Suite 200, Portland, ME 04101
Tel: 207.623.1234 Fax: 207.623.1235

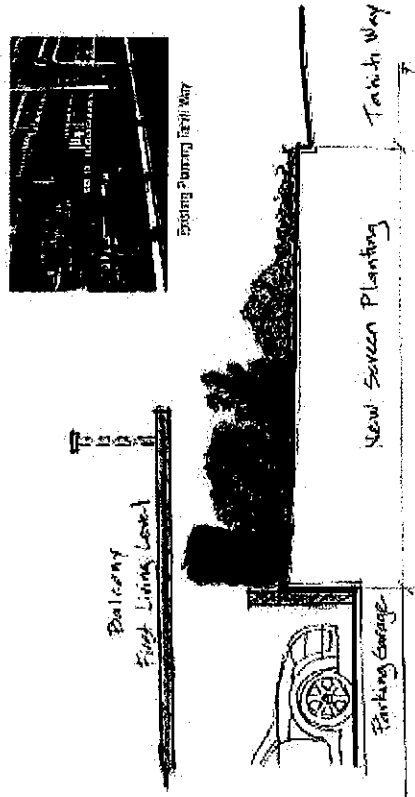
本會之宗旨在於促進我國學術研究之發展，並加強與國際學術界之交流，以增進我國學術之國際化程度。本會之組織及運作，均應符合學術研究之特性，並應尊重學術自由之原則。本會之經費來源，應以學術研究之需要為首要考量，並應確保經費之透明與合理使用。本會之成員，應具備學術研究之專業背景，並應遵守學術道德規範。本會之運作，應定期向社會大眾報告其工作進度及財務狀況，以確保其運作之公開與透明。本會之目標，在於建立一個學術研究之良好平台，並為我國學術研究之發展做出貢獻。

02.17.02

Filename: exhibit A to the lease nov19-09rev. 110409
Page 40

Initial _____

Parcel 8 – Screen planting dated 6/20/08



Screen planting

EXHIBIT L-5

PARCEL 8

THE BAY CLUB JEFFREY DEL REY, CO.

APPLICANT'S ADDRESS

APPROVED BY

PROJECT: NEW LUXURY RESIDENTIAL DEVELOPMENT

DATE: 11/10/09

Initial

Parcel 8 – Landscape improvements dated 6/20/08

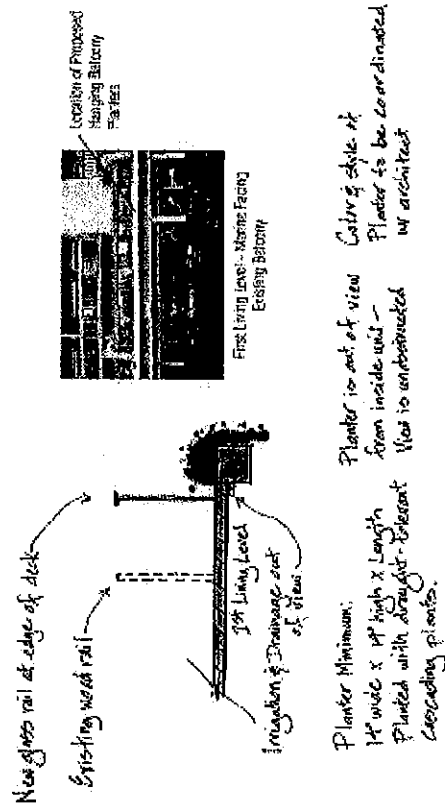


What's in it for you?

Initial _____

Exhibit A-L8

Parcel 8 – Hanging Planter dated 6/20/08



Marina Facing Balconies

Hanging planter

EXHIBIT L-8
PARCEL ST
THE BAY CLUB-Marina del Rey, CA

APPLICANT'S ADDRESS:
ONE BAY CLUB DRIVE, MARINA DEL REY, CA 90292

APPLICANT'S NAME:
THE BAY CLUB-Marina del Rey, CA



02-11-08
Rev 10/2/08

[Signature]

EXHIBIT C

ASSIGNMENT STANDARDS

These standards are to apply to proposed transactions requiring County's consent pursuant to Section 11.2 of the Lease. These standards and conditions are not to apply to (a) an assignment for the purpose of securing leasehold financing from an Encumbrance Holder approved by County, (b) the transfer of the leasehold in connection with a foreclosure or transfer in lieu of foreclosure by an approved Encumbrance Holder, or (c) the first transfer by that Encumbrance Holder if it has acquired the leasehold through a foreclosure or a transfer in lieu of foreclosure.

1. The proposed transferee must have a net worth determined to be sufficient in relation to the financial obligations of the lessee under the Lease (equal to at least six (6) times the total Annual Minimum Rent and Percentage Rent due to County for the most recent fiscal year). A letter of credit, cash deposit, guarantee from a parent entity or participating individual(s) having sufficient net worth (as set forth in the preceding sentence) or similar security satisfactory to County may be substituted for the net worth requirement. If the proposed transferee's net worth is materially less than the transferor's, County may disapprove the assignment or require additional security such as that described in the previous sentence.
2. The proposed assignee must have significant experience in the construction (if contemplated), operation and management of the type(s) of Improvements existing on or to be constructed on the Premises, or provide evidence of contractual arrangements for these services with providers of such services satisfactory to County. Changes in the providers of such services and changes to the contractual arrangements must be approved by the County. All such approvals of County will not be unreasonably withheld, conditioned or delayed.
3. The individual or individuals who will acquire Lessee's interest in this Lease or the Premises, or who own the entity which will so acquire Lessee's interest, irrespective of the tier at which such individual ownership is held, must be of good character and reputation and, in any event, shall have neither a history of, nor a reputation for: (1) discriminatory employment practices which violate any federal, state or local law; or (2) non-compliance with environmental laws, or any other legal requirements or formally adopted ordinances or policies of County.
4. The price to be paid for the acquired interest shall not result in a financing obligation of the proposed transferee which jeopardizes the Lessee's ability to meet its rental obligations to County. Market debt service coverage ratios and leasehold financial performance, at the time of the Proposed Transfer, will be used by County in making this analysis.
5. If the proposed transferee is an entity, rather than an individual, the structure of the proposed transferee must be such that (or the assignee must agree that) County will have reasonable approval rights regarding any future direct or indirect transfers of interests in the entity or the Lease; provided however, that a transfer



of ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to County approval.

6. The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold or any portion thereof.
7. The proposed transferee does not have interests which, when aggregated with all other interests granted by County to such transferee, would violate any policy formally adopted by County restricting the economic concentration of interests granted in the Marina del Rey area, which is uniformly applicable to all Marina del Rey lessees.
8. The transfer otherwise complies with the terms of all ordinances, policies and/or other statements of objectives which are formally adopted by County and/or the County Department of Beaches and Harbors and which are uniformly applicable to persons or entities with rights of occupancy in any portion of Marina del Rey.

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EXHIBIT D

CONDITIONS TO COASTAL DEVELOPMENT PERMIT

[To be added]

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EXHIBIT E

EXAMPLES OF PERMITTED CAPITAL EXPENDITURES

Subject to the terms and provisions of Section 5.13 of the Lease, set forth below is a list of examples of elements, systems or categories of Improvements for which Permitted Capital Expenditures may be made. The Capital Improvement Fund shall not be used for the repair or replacement of an individual or a selected group of individual items, unless such repair or replacement is part of a larger plan (which may be a phased plan) of repair or replacement of all, or substantially all, similar items.

Painting of the building exterior*

Walkway and Driveway replacement* (if asphalt, a minimum of resurfacing, not slurry seal)

Windows replacement*

Roof replacement* (may be on a building by building basis)

Elevators (replacement or addition)

HVAC replacement

Light fixtures replacement* (interior and exterior)

Irrigation system* (replacement or major addition)

Dock replacement

* To qualify, these expenditures need to incorporate replacement or renovating of at least seventy percent (70%) of the items or facilities in question.



EXHIBIT F

WATER QUALITY MANAGEMENT PROGRAM

[To be added]

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